



# AGE OF CONSENT COMMITTEE

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## EVIDENCE

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1928-1929

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Volume III

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Oral Evidence and Written Statements  
of  
Witnesses from the Bombay Presidency  
(Continued—Bombay and Poona)  
and the Central Provinces and Berar.



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# EVIDENCE.

## TABLE OF CONTENTS.

*N.B.*—Dr. stands for Doctor.

L.    "    "    Lady.  
M.    "    "    Mahomedans.  
T.    "    "    Texts.

	PAGES.
QUESTIONNAIRE . . . . .	xix—xxii
ORAL EVIDENCE OF WITNESSES AND THEIR WRITTEN STATEMENTS	1—741

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
<b>BOMBAY.</b>					
1	..	Mr. S. K. Bole	M. L. C., Dadar, Bombay.	1—3	3—13
2	..	Sir Purshotamdas Thakurdas, Kt., C.I.E., M.B.E.	M. L. A., Bombay	14—16	16—27
3	L. Dr.	Dr. M. I. Balfour	Medical Practitioner, Bombay.	27—29	29—37
4	..	Mr. Kanji Dwarkadas	Bombay	37—40	40—53
5	..	Mr. M. R. Jayakar, Bar-at-Law.	M. L. A., Bombay	..	53—61
6	..	Mr. P. M. Bhat, LL.B.	Retired First Class Sub-Judge, now Chief Judge, Bhuj.	61—62	62—71
7	..	Mr. Jumnadas Mehta	M. L. A., Bombay	..	71—83
8	L.	Mrs. Manglagavri Chunilal H. Setalvad.	Bombay	83—85	85—87
9	..	Dr. J. N. Karande and Mr. S. M. Varde.	On behalf of the Saraswat Brahman Samaj, Bombay.	87—90	90—99
10	..	Mr. D. Girdharlal	Assistant Traffic Superintendent, B., B. and C. I. Railway, Bombay.	99—101	101—107

No.	Names.	Designation.	PAGES.	
			Written Statement.	Oral Evidence.
11	.. Mr. V. N. Hate, B.Sc.	<b>BOMBAY—contd.</b>		
12	.. Mr. Manikram Nana- bhai Talpade, B.A., LL.B.	President, Daivadnya Association, Bom- bay.	108	109—115
13	M. Mr. I. S. Haji, B.A., B.Sc. (Ecom.) (Lond.), F.R.E.S.	On behalf of the Pathare Prabhu Social Samaj, Bom- bay.	115—116	116—125
14	.. Mr. Makanji J. Mehta	Bar.-at-Law, Bombay.	125—130	130—138
15	L. Miss B. A. Engineer, M.B.E., M.A., LL.B.	Bar.-at-Law, Hony. Secretary, Bombay Mangrol Jain Sabha, Bombay.	138—139	140—144
16	Dr. Dr. Jadavji Hansraj, D.O.M.S. (Eng.), J. P.,	Secretary, Seva Sadan, Bombay.	144—145	145—148
17	.. and Mr. Premji Chaturbhuj.	President and Hony. Secretary of the Bhatia Mitra Mandal, Bombay.	149—150	151—158
18	L. Dr. Mrs. Malini B. Sukh- tankar, M.B., B.S.	Hony. Physieian for Children, Cama and Albless Hospitals, Bombay .	158—160	161—166
19	.. Sir Lalubhai Samaldas, Kt., C.I.E.		166—167	167—176
20	L. Miss M. Kathorine Davis, B.A.	Secretary, The Children's Aid Society, Children's Home, Umarchadi.	176—178	178—182
21	L. Mrs. Avantikabai Gokhalay.	President, Hindu Mahila Samaj, Bom- bay.	182—184	184—189
22	M. Mr. Abdur Rauf Khan	Secretary, Anjuman-o- Zia-ul-Islam, Bom- bay.	189—190	190—192
23	.. Rao Bahadur G. V. Pradhan, B.A., LL.B.	District Govt. Pleader and Public Prosecu- tor, Nasik.	192—195	195—202
24	Dr. Dr. Y. V. Bhandarkar	Secretary, Prarthana Samaj, Bombay.	202—203	204—212

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
BOMBAY—contd.					
25	..	Mr. R. P. Masani	} On behalf of the Vigilance Society, Bombay.	212—214	214—220
26	..	and Miss I. N. Dickinson			
27	Dr.	Dr. Mangaldas Mehta	Physician - in - charge Nowrozjee Wadia Maternity Hospital, Bombay.	..	221—223
28	L. M.	Mrs. Faiz B. Tyabji	Somerset Lodgo, Bombay.	223—224	224—229
29	L. Dr.	Dr. Miss Cama	Inspectress of Factories, Bombay.	..	229—233
30	L. Dr.	Dr. Miss Kashibai Nowrange, B.A., L. M. and S., J. P.	Hony. Secretary, Arya Mahila Samaj, Bombay.	233—235	235—243
31	..	Mr. D. G. Dalvi	On behalf of the Bombay Presidency Social Reform Association.	243—246	246—259
32	..	Mr. Krishnalal Mohanlal Jhaveri, M.A., LL.B.	Chief Judge, Court of Small Causes, Bombay.	260—261	..
33	L.	Mrs. Maganben Manekchand, J. P.	R. R. Shrivik Ashram, Bombay.	261	..
34	..	Hon'ble Sir C. G. H. Fawcett.	Judge, High Court, Bombay.	262—263	..
35	..	Mr. G. B. Trivedi	Bombay . . .	263—264	..
36	..	Mr. K. B. Bhadrappu, M.A.	Sub-Divisional Magistrate, Ratnagiri.	264—265	..
37	..	Mr. P. B. Shingne, B.A., LL.B.	Govt. Pleader, High Court, Bombay.	266—267	..
38	..	Mr. I. N. Mohta, B.A., LL.B.	Presidency Magistrate, 4th Court, Bombay.	267—268	..
39	L. M.	Mrs. Khadija Shaffi Tyabji.	Bombay . . .	268	..
40	..	Mr. N. V. Mandlik, B.A., LL.B., J. P.	Sheriff of Bombay	269	..
41	..	Mr. Beram N. Sanjana	District Judge, Thana	270—271	..
42	L.	Mrs. Motabai M. D. Thackersey.	Bombay . . .	271—272	..

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
BOMBAY—contd.					
43	L. M.	Atiya Begum Sahiba	Malabar Hill, Bombay	272—273	..
44	..	Hon'ble Mr. Justice W. T. W. Baker, B.A., I.C.S.	Acting Judge, High Court, Bombay.	273—274	..
45	M.	Mr. Ghyasuddin J. Kokni.	Hony. Magistrate, Nasik.	274	..
46	L.	Miss J. B. Engineer .	Cumballa Hill, Bombay	275—276	..
47	..	Hon'ble Mr. Manmo- handas Ramji.	Bombay . . . .	276—277	..
48	..	Mr. Lowjee Megjee, J. P.	Ditto . . . .	277—278	..
49	..	Mr. N. P. Patankar, B.A., LL.B.	High Court Vakil, Nasik.	278—280	..
50	L.	Miss Rachel David .	Bombay . . . .	280—281	..
51	..	Sir Jagmohandas Vurjiwandas.	Ditto . . . .	281—282	..
52	L.	Lady Laxmibai Jug- mohandas.	Ditto . . . .	282—283	..
53	..	Mr. Laxmi Shankar R e w a s h a n k a r Trivedi.	Ditto . . . .	283—284	..
54	M.	Mr. Mohamad Yusaf Khatkhatay.	Ditto . . . .	284—285	..
55	L.	Miss Nawajbai D. Contractor, B.A, J. P.	Lady Superintendent, The Chandaramji Girls' High School, Bombay.	285—287	..
56	L.	Luxmibai Jugmohan- das.	On behalf of the Gujerat Hindu Stai Mandal, Bombay.	287—289	..
57	..	Mr. D. M. Ranadive, B.A.	Hazur Deputy Collec- tor, Thana.	289—291	..
58	Dr.	Dr. Y. G. Nadgir, M.S., F.C.P.S.	Professor of Anatomy, Grant Medical College, Bombay.	292—293	..
59	..	Mr. N. B. Divatia, C. S. Retired.	Santa Cruz, Bombay	293—296	..

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
BOMBAY—contd.					
60	M.	Sir Mohamud Yusaf, Kt.	Bombay . . .	296—297	..
61	..	Mr. J. P. Mehta .	Hony. Joint Secretary, Parsi Central Association, Bombay.	297—298	..
62	..	Mr. V. H. Naik, M.A.	Bar.-at-Law, Collector and District Magistrate. Bijapur.	298—299	..
63	T.	Mr. Jagannath Atmaram Samant, B.A., LL.B.	First Class Sub-Judge, Dhulia.	299—304	..
64	..	Mr. P. L. Thacker, B.A., LL.B.	Advocate, Presidency Magistrate, Sixth Court, Bombay.	304—305	..
65	F.	Mr. Ramdatt W. Desai, B.A., LL.B.	Hony. Secretary, Pleaders' Association of Western India, Bombay.	305—310	..
66	..	Mr. Sorab B. Dadyburjor.	Hony. Secretary, Bombay Vakils' Association.	310—311	..
67	T.	Mr. B. R. Ransing, B.A., LL.B.	Pleader, Dhulia .	311—315	..
68	..	Rao Saheb Anandrao Shripatrao Deshmukh.	President, District Board, East Khandedesh.	315—316	..
69	L. M.	Mrs. Salim Ali .	Secretary, Bombay Presidency Women's Council.	316—317	..
70	..	Rao Saheb Gulabchand Hirallal and Seth Kashinath Mulchand.	Dhulia, West Khandedesh.	317—319	..
71	L.	Miss P. M. Kanga. M.Sc.	Joint Hony. Secretary, Bombay Presidency Women Graduates' Union, Bombay.	319—321	..
72	..	Mr. W. Edward .	Acting General Secretary, Bombay Young Men's Christian Association.	321—322	..



No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
BOMBAY—contd.					
73	..	Mr. Hiralal Dayabhai Nanavati.	Solicitor, Bombay .	322—324	..
74	..	Mr. Khurshed F. Nariman, B.A., LL.B.	M. L. C., Bombay .	324—327	..
75	..	Mr. S. S. Pradhan .	President, District Board, Thana.	327—328	..
76	..	Mr. Joseph Bocarro, I. S. O.	Registrar, Bombay Medical Council.	328	..
77	Dr.	Dr. G. V. Deshmukh, M. D. (Lond.), F.R.C.S.	President, Municipal Corporation, Bombay.	328—330	..
78	..	....	Secretary, Grain Merchants' Association, Bombay.	330	..
79	..	Rao Saheb R. V. Vaudekar, J. P., M. L. C.	General Secretary, Maratha Educational Conference, Bombay.	331	..
80	..	Mr. A. N. Surve, B.A., LL.B., J. P., Fellow University.	Advocate, Bombay .	331—334	..
81	..	Mr. B. V. Jadhav, M.A., LL.B., J. P.	M. L. C., Bombay .	334—335	..
82	..	Mr. H. P. Dastur, LL.B., Bar-at-Law.	Chief Presidency Magistrate and Revenue Judge, Bombay.	335—336	..
83	T.	Rao Saheb Maganlal Dalpatram Khakhar, J. P.	Bombay . . .	336—338	..
84	Dr.	Sir Temulji B. Nariman, Kt.	President of the Society for the Protection of Children in Western India.	338—339	..
85	..	Mr. Nayan H. Pandia	Hony. Secretary, Bombay Incorporated Law Society.	339	..
86	..	Mr. M. S. Pandit, M.A. (S. M.).	Presidency Magistrate, Third Court, Bombay.	339—340	..

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
BOMBAY—concl'd.					
87	L.	Mrs. Padmavati R. Saraiya.	Bombay . . .	340—341	..
88	..	Raja Narayanlal Bansilal.	Ditto . . .	341—342	..
89	..	Mr. Govindlal Shivlal Motilal.	Poona . . .	342—345	..
90	..	Mr. Devidas Madowji Thakersey, J. P.	Chairman, Halai Bhatia Community, Bombay.	345—346	..
91	..	Mr. Ardeshir R. Subedar.	Contractor, Bombay .	346—347	..
92	M.	Mr. Fateh Mohamed Yusaf.	Bombay . . .	318	..
93	T.	Mr. Chandumal Nasor-mal.	Hony. Secretary, Shri Shikarpur Shewak Samaj, Bombay.	348—350	..
94	..	Mr. H. D. Rajah .	Hony. Secretary, The Khar Youth League.	351—352	..
95	Dr.	Dr. S. K. Vaidya .	Medical Practitioner, Medical Research Laboratory, Bom-bay.	352—353	..
96	..	Notes on a visit to institutions in Bombay City by the Age of Consent Committee.		354	..
POONA.					
1	..	Mr. J. R. Gharpure, B.A., LL.B.	Principal, Law College, Poona.	355—357	357—363
2	..	Rao Bahadur L. V. Parulekar.	Pleader, Ratnagiri .	364—365	366—374
3	..	Mr. A. Y. Kate . .	President, District Local Board, Poona.	375	375—379
4	..	Mr. P. Bunter, B.A., LL.B.	Public Prosecutor, Poona.	380—381	381—392
5	..	Mr. K. S. Jathar, C.I.E.	Poona . . .	..	392—402
6	Dr.	Khan Bahadur Dr. Kershaw D. Kham-batta.	Health Officer, Poona City.	..	402—404

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
POONA—contd.					
7	L. Dr.	Dr. Ranken . . .	Missionary Hospital, Poona.	...	404—408
8	..	Mr. A. K. Asundi, B.A., LL.B.	Acting District and Sessions Judge, West Khandesh, Dhulia.	409—411	411—416
9	..	Mr. N. J. Sheikh, B.A., LL.B.	Assistant Sessions Judge, Dharadar.	416—417	418—423
10	..	Rao Bahadur R. R. Kale, B.A., LL.B.	M. L. C., Advocate, Satara and President, Satara Social and Liberal Association, Satara.	423—424	424—435
11	T.	Mr. Dattatraya Ganesh Kale.	Asoda, West Khandesh	435—437	437—441
12	L.	Mrs. Janakibai Bhat	Lady Superintendent, Poona Seva Sadan, Poona City.	..	441—446
13	T.	Rao Sahib Gulabchand Hira Lal.	Dhulia . . .	446—448	448—452
14	..	and Seth Kashinath Mulchand.			
15	..	Mr. M. D. Karki .	M. L. C., Honavar, Kanara.	452—453	453—459
16	M.	Khan Sahib Mohammed Ibrahim Makan.	Land holder in Kolavana.	459—461	461—463
17	L. Dr.	Mrs. Vakil . . .	King Edward Memorial Hospital, Poona.	..	464—465
18	..	Mr. R. P. Pandit, M.A., LL.B.	Assistant Commissioner, Southern Division, Belgaum.	465—470	470—475
19	M.	Mr. J. S. Kadri .	Educational Inspector, S. D., Belgaum.	475—476	476—485
20	T.	Mr. G. G. Havaldar .	District Court Pleader and President, Bar Association, Bijapur.	486—487	487—496
21	..	Rao Bahadur G. K. Chitale, B.A., LL.B.	High Court Pleader, Ahmednagar.	497—498	..
22	L. M.	Mrs. S. B. Tyabji .	Satara . . .	498—499	..

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
POONA—contd.					
23	..	Mr. G. T. Konnur	Resident Magistrate, First Class. Hubli.	499—501	..
24	..	Mr. C. B. Nagarkar, I.C.S.	Assistant Judge, Poona	501—504	..
25	L.	Mrs. A. Kamat	C/o Major Kamat Civil Surgeon, Sholapur.	504—505	..
26	T.	Rao Bahadur W. G. Rale.	Special Magistrate, Poona Cantonment.	505—507	..
27	L. Dr.	Miss Ethel Ambrose, M.B., B.S.	Lady Doctor, Poona and Indian Village Mission Hospital, Pandharpur.	507	..
28	..	Mr. S. A. Naik	Judge of the Court of Small Causes, Poona.	507—509	..
29	..	Mr. M. D. Bhat, I.C.S.	Sholapur . . .	509—510	..
30	..	Mr. E. Weston	District and Sessions Judge, Poona.	510—511	..
31	..	Mr. M. A. Phanse	District Deputy Collec- tor, Satara.	511—512	..
32	..	Mr. K. B. Wassoodew	District and Sessions Judge, Bijapur.	512—513	..
33	..	Mr. K. A. Ghasawalla	Bar-at-Law, President, Poona Bar Associa- tion.	514—515	..
34	..	Mr. R. R. Divekar	District Deputy Collec- tor, Kanara (S. D.).	516—517	..
35	..	Mr. Dadiba C. Mehta, M.A., LL.B.	District and Sessions Judge, Ahmednagar.	517	..
36	T.	Mr. M. H. Limaye	First Class Sub-Judge, Satara.	518—520	..
37	T.	Mr. S. G. Kharkar	President, Bar Associa- tion, Satara.	520—521	..
38	..	Mr. F. G. H. Anderson, I.C.S.	M. L. C., Commissioner, Poona.	521—523	..
39	..	Mr. B. S. Muzumdar and Mr. V. P. Prabhu, B.A.	President and Member D. L. B., Ankola.	523—524	..

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
POONA—concl'd.					
40	..	Mr. R. G. Dandavate, B.A., LL.B.	Pleader, Poona City	524—526	..
41	M.	Mr. Mohammed Hashim Moledina.	Poona . . .	526—527	..
42	T.	Mr. C. V. Vaidya, M.A., LL.B.	Poona . . .	527—528	..
43	..	Mr. M. G. Gopi	President, District Local Board, Kanara.	528—530	..
44	..	Mr. M. T. Shetty, B.A., LL.B.	Member, District Local Board, Karwar.	530—532	..
NAGPUR.					
1	..	The Hon'ble Sir Manekji Dadabhoy.	Member, Council of State, Nagpur.	..	532—539
2	..	Rai Bahadur Prabhat Chandra Bose, B.A., LL.B.	M. L. C. Jubbulpore.	539—540	540—548
3	Dr.	Dr. L. Sen . . .	Health Officer, Nagpur Municipality, Nagpur.	..	549—553
4	L.	Mrs. W. Tarr . . .	Hony. Secretary, Child Welfare Centre, Nagpur.	..	553—555
5	..	Mr. Laxmi Narayan, B.A., B.L.	Retired District and Sessions Judge, Akola (Berar).	556—558	558—568
6	..	Mr. G. T. Meshram . .	Vice-President, Civil Station Sub-Committee, Nagpur.	568—570	570—575
7	Dr.	Dr. R. K. Mehta . .	Health Officer, Central Provinces, Nagpur.	575—576	576—579
8	L.	Dr. N. R. Mucadam, W.M.S.	Hony. Secretary, Countess of Dufferin Fund, Nagpur Branch. and Medical Officer-in-charge, Daga Memorial Hospital, Nagpur.	579—580	581—584

No.	—	Names.	Designat.on.	PAGES.	
				Written Statement.	Oral Evidence.
NAGPUR—contd.					
9	L.	Mrs. Bivalkar . . .	Health Visitor and Midwife, Nagpur.	584—585	585—586
10	..	Mr. R. M. Deshmukh	M. L. C., Bar-at-Law, Nagpur.	586—588	588—595
11	L.	Mrs. Anasuyabai Kale	M. L. C., Nagpur .	595—597	597—601
12	..	Mr. B. G. Khaparde, B.A., LL.B.	M. L. C., Amraoti .	601—605	605—617
13	..	Rai Bahadur Ganeshdas Kundanmal. . .	Amraoti . . .	617—618	618—621
14	..	Mr. L. K. Ogle . . .	M. L. C., Hindu Missionary Boarding, Amraoti.	621—622	622—625
15	T.	Rao Bahadur Sadashiv Jairam, M.A.	Mahamahopadhyaya, Nagpur.	625—627	627—632
16	M.	Mr. Abdul Kadir . .	Pleader, Amraoti .	632—634	634—637
17	..	Rai Bahadur Govindrao Mandloi.	Chairman, District Council, Nimar.	638—639	..
18	..	Mr. V. K. Deshpande, B.A., LL.B.	Additional District and Sessions Judge, Jubbulpore.	639—641	..
19	T.	Mr. R. S. Shukla . .	Vakil, Raipur . . .	641—644	..
20	M.	Khan Bahadur M. E. R. Malak.	Nagpur . . .	644—646	..
21	T.	Mr. Y. M. Kale, B.A., LL.B.	M. L. C., Buldana .	646—647	..
22	..	Mr. G. P. Jaiswal, LL.B. . .	M. L. C., High Court Pleader, and President of Solapur Municipal Committee.	647—648	..
		Mr. G. P. Dick. C.I.E.	Bar-at-Law, M. L. C., Government Advocate, Nagpur.	649	..
23	..	Mr. A. R. Pimprikar	President, Bar Association, Buldana.	649—651	..
24	..	Mr. M. P. Kolhe . .	M. L. C., Yeotmal .	651—652	..
25	T.	Mr. Onkar Prasad Misra.	Judge. Small Cause Court. Khandwa.	652—654	..
26	..	Mr. M. C. Tiwary, B.A., LL.B.	Additional , District and Sessions Judge, Bilaspur. .	654—656	..

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
		NAGPUR—contd.			
27	..	Mr. R. D. Beohar .	Extra Assistant Commissioner, Betul.	656—662	..
28	..	Seth Mathuradas Mohota.	M. L. C., Proprietor, The R. S. Rekhchand Mohota Spinning and Weaving Mill, Hinganghat.	662—663	..
29	L. Dr.	Miss Mina Mackenzie. M.D., C.M.	Canadian United Church Mission Hospital, Dhar, Central India.	664	..
30	..	Mr. J. L. Pradhan .	Extra Assistant Commissioner, Buldana.	664—666	..
31	M.	Mr. Karamali . .	President, Municipal Committee, Chanda.	666—667	..
32	..	Rai Bahadur N. N. De	Bar-at-Law, President, Bar Association. Bilaspur.	667—668	..
33	..	Mr. N. B. Patel .	Chairman, District Council, Yeotmal.	668—669	..
34	L. Dr.	Dr. Anna P. Martin, M.D.	Mure Hospital, Nagpur	669—670	..
35	..	Mr. D. W. Kathalay, B.A., LL.M.	Advocate, Dhantoli, Nagpur.	670—671	..
36	..	Raja Kuwar Laxman Rao Bhonsle.	Nagpur . . . .	672	..
37	..	Rai Bahadur K. G. Damle, C.I.E.	High Court Vakil, Akola.	672—674	..
38	..	Mr. G. V. Doshmukh .	Bar-at-Law, Civil Station, Nagpur.	674—676	..
39	..	Mr. C. J. Irwin, C.I.E., I.C.S.	M. L. A. Commissioner, Jabulpore Division.	676—677	..
40	..	Mr. M. B. Kinkhade .	Additional Judicial Commissioner, Nagpur.	677—680	..
		District Council .	Bilaspur. . . .	680	..
41	..	Mr. N. K. Mohgaonkar, B.A., B.L.	Additional District and Sessions Judge, Yeotmal.	680—682	..

No.	—	Names.	Designation.	PAGES.	
				Written Statement.	Oral Evidence.
			<b>NAGPUR—contd.</b>		
42	..	....	Municipal Committee, Bilaspur.	682—683	..
43	..	Mr. C. S. Findlay, I.C.S.	Judicial Commissioner, Central Provinces, Betul.	683—684	..
44	..	Mr. Balaji Vinayakrao Buti.	Banker and Landlord. Sitabuldi, Nagpur.	684—686	..
45	..	Rao Bahadur R. V. Mahajani, B.A., LL.B.	President, Bar Association, Akola.	686—688	..
46	..	Rai Bahadur Pandit Radha Raman, M.A.	Dewan and Vice-President, Council of Regency, Narsingarh State.	688—690	..
47	L.	Lady Yeshwadabai Joshi.	Amraoti . . .	690—691	..
48	..	Mr. K. G. Tamhan, M.A.	Nagpur . . .	691—692	..
49	..	District Council	Balaghat . . .	692	..
50	..	Mr. R. J. Amardekar, B.A., LL.B.	Officiating District and Sessions Judge, Hoshangabad.	692—694	..
51	..	Mr. M. B. Rege, B.A., LL.B.	Member, Bar Association, Khandwa.	694—696	..
52	..	Mr. R. M. Wathodkar, B.A., B.L.	Additional District and Sessions Judge, Akola.	696—698	..
53	..	Rao Bahadur K. J. Deshmukh.	Khamgaon . . .	698—699	..
54	L.	Mrs. J. F. McFayden	Secretary, Ladies Club, Nagpur.	699	..
55	..	Rao Sahib Ramrao Krishnarao Shri-khandey, M.A., LL.B.	Public Prosecutor, Saugor.	699—701	..
56	..	Rai Bahadur K. S. Nayudu, B.A., LL.B.	Public Prosecutor, Wardha.	701—702	..
57	L.	Mrs. E. G. Dick	Vice-President, Ladies Club, Nagpur.	702—703	..



No.	—	Names.	Designation.	PAGES.	
				Written Statement	Oral Evidence.
		NAGPUR—concl'd.			
58	..	Rao Sahib Pandit V. B. Kekre, B.A., LL.B.	President, Municipal Committee. Mandla.	703—704	..
59	..	Mr. Jaswantrao Nagi	Honorary Magistrate. Chatarce.	704—706	..
60	T.	Mr. S. K. Barlinge .	Pleader, Nagpur .	706—710	..
61	..	Colonel H. deL. Pollard Lowsley, C.M.G., C.I.E., D.S.O.	Chief Engineer, P. W. D. (Irrigation Branch), Nagpur.	710	..
62	T.	Mr. T. D. Dharma- dhikary.	Additional District and Sessions Judge, Raipur.	710—713	..
63	..	Mr. L. R. Abhyankar. B.A., LL.B.	President, Municipal Committee, Yeotmal.	713—715	..
64	..	Rao Bahadur B. R. Angal.	President, Bar Asso- ciation, Amraoti.	715—716	..
65	..	Mr. K. B. L. Seth, M.A., LL.B., I.C.S. Candhri Progi Singh .	District and Sessions Judge, Wardha. Rais, Honorary Magis- trate and Chairman, Municipal Board, Banda.	716—723 723—724	.. ..
66	L.	Mrs. Sitabai Landge .	Yeotmal . . .	724—725	..
67	..	Mr. M. A. Amraotkar	Additional District and Sessions Judge, Akola.	725—727	..
68	..	Mr. R. N. Banerjee, I.C.S.	Deputy Commissioner, Akola.	727—728	..
69	..	Mr. R. N. Mundle .	Yeotmal . . .	729—730	..
70	..	Mr. N. S. Patil . .	M. L. C., Pleader, Akola.	730—734	..
71	L. Dr.	Dr. Anandibai Kodalkar, M.B., B.S.	Lady Assistant Surgeon, Chanda.	734—735	..
72	Dr.	Vaidya Panehanan L. B. Phansikar.	Nagpur . . .	735—737	..
73	M.	Mr. Ishtiaq Ali .	Extra Assistant Com- missioner, Seoni.	738—739	..
74	..	Mr. N. B. Khalatkar .	Pleader, Katol . .	739—740	..
75	L.	Mrs. Anandibai Damle	Yeotmal . . .	740—741	..

The following persons were invited to give oral evidence but did not appear:—

#### BOMBAY.

1. Secretary, Grain Merchants' Association, Bombay.
2. Mr. Khurshed F. Nariman, B.A., LL.B., M.L.C., Bombay.
3. The General Secretary, Bombay Young Men's Christian Association, Bombay.
4. The Honorary Secretary, Bombay Presidency Women's Council, Town Hall, Bombay.
5. The Hon'ble Mr. Munmohandas Ramji, Member, Council of State, Bombay.
6. Rao Sahib Anandrao Shripatrao Deshmukh, President, District Local Board, Jalgaon.
7. The Honorary Joint Secretary, Parsi Central Association, Bombay.
8. Sir Mahomad Yusaf, Kt., Queen's Road, Bombay.
9. Mr. S. N. Haji, M.L.A., Bombay.
10. Mr. D. V. Belvi, M.L.A., Belgaum.
11. Mr. Mahomad Ali Jinnah, M.L.A., Malabar Hill, Bombay.
12. Miss Navajbai D. Contractor, B.A., J.P., Lady Superintendent, The Chanda Ramji Girls' High School, Bombay.
13. Mr. N. M. Joshi, M.L.A., Servants of India Society, Girgaum, Bombay.
14. Miss Rachel David, Bombay.
15. Mr. Fazal Ibrahim Rahimtulla, M.L.A., Hornby Road, Fort, Bombay.
16. Sir Victor Sasoon, M.L.A., Ballard Estate, Bombay.
17. Dr. J. S. Nerurkar, Deputy Health Officer, Gamdevi, Bombay.
18. Atya Begum Sahiba, Aiwan-e-Rifat, Malabar Hill, Bombay.
19. Mr. Goswami Shree Gokulnathji, Third Ghosaiwada, Bombay.
20. Khadija Shuffi Tyabji Sahiba, Khetwadi Main Road, Bombay.
21. Director of Public Health for the Government of Bombay.
22. Mr. Ghulam Mohd. Munshi, Bar-at-Law and Public Prosecutor, Rajkot.
23. Raja Narayanlal Bansilal, Kalbadevi Road, Bombay.
24. Mohammad Yusaf, Lonavla.
25. Dr. N. A. Purandare, M.D., Sandhurst Road, Bombay.
26. Health Officer, Bombay.
27. Haji Ghulam Hussain, Head Priest of the Sulaiman Community, Grant Road, Bombay.
28. The Principal Doctor-in-charge, Wadia Maternity Home, Parel, Bombay.

#### POONA.

1. Mr. S. A. Manurkar, President, Poona City Municipality.
2. Mr. N. O. Kelkar, M.L.A., Kesari and Mahratta Office, Poona City.
3. Mr. C. B. Nagarkar, B.A., I.C.S., Assistant Judge, Poona.
4. Director of Public Health, Poona.
5. Kazi Salahuddin, 30, Wellesley Street, Poona.
6. The Hon'ble Sir Ebrahim Haroon Jaffar, Kt., Member Council of State, Poona.
7. Pandit Vasudev Shastri, Ferguson College, Poona.

THE CENTRAL PROVINCES—NAGPUR.

1. Sir S. M. Chitnavis, Nagpur.
2. Mr. Faizul Hasan, B.A., LL.B., Hony. Secy., District Council, Balaghat.
3. Rao Bahadur R. V. Mahajani, President, Bar Association, Akola.
4. Nawab Niazuddin Khan, Nagpur.
5. Dr. M. R. Goverdhan, M.B., B.S., D.P.H., etc., Medical Officer of Health, Jubbulpore.
6. Dr. Keskar, Nagpur.
7. Rai Bahadur K. J. Deshmukh, Khamgaon, Berar.
8. Dr. A. P. Martin, M.D., Mure Hospital, Nagpur.
9. Raja Luxmanrao Bhonsla, Junior Bhonsla Estate, Nagpur.
10. Mr. G. P. Jaiswal, B.Sc., LL.B., M.L.C., Sohagpur.
11. Rai Bahadur Govind Rao Mandloi, Chairman, District Council, Nimar.
12. Shamsul-Ulema Maulvi Mohd. Amin, Retired Judge, Jubbulpore.
13. Mr. Sami Ullah Khan, B.A., LL.B., Vakil, Nagpur.
14. Mr. M. P. Kolhe, M.L.C., Yeotmal.
15. Rai Bahadur K. S. Nayudu, B.A., LL.B., Public Prosecutor, Wardha.

# THE AGE OF CONSENT COMMITTEE.

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## QUESTIONNAIRE.

NOTE.—*The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.*

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code?

2. What are the circumstances which in your opinion justify—

(1) retaining the law of the Age of Consent as it is, or

(2) making an advance on the present law.

3. Are crimes of seduction or rape frequent in your part of the country? Has the amendment of the law made in 1925 raising the Age of Consent to 14 years succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes? If not, what measures would you propose to make the law effective?

4. Has the amendment of 1925 raising the Age of Consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age limit—

(1) by postponing the consummation of marriage,

(2) by stimulating public opinion in that direction, or

(3) by putting off marriage beyond 13.

If not, what steps would you propose to make it effective?

5. What is the usual age at which girls attain puberty in your part of the country? Does this differ in different castes, communities or classes of society?

6. Is cohabitation common in your part of the country among any class or classes of people—

(1) before puberty,

(2) soon after puberty,

(3) before the girl completes 13 years.

Do any of these cases come to court?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach?

8. Is 'Gaona' or 'Garbhadan' ceremony usually performed in your part of the country? If so, does it coincide with or is it anterior to the consummation of marriage. Is it performed generally after the attainment of puberty and how soon after it?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the Age of Consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

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## EXTRACTS FROM THE INDIAN PENAL CODE.

*NOTE.—The bracketted portions are to be omitted from and those in italics are to be added to the original as per Sir Hari Singh Gour's Bill.*

### SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

#### SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both).

#### Section 376-A.

376-A. Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illicit married intercourse.*

Extracts from the Code of Criminal Procedure, 1898, Schedule II.

\* \* \* \* \*

Of Rape.

NLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
1	2	3	4	5	6	7	8
376	Rape— (If the sexual intercourse was by a man with his own wife not being under 12 years of age).	(Shall not arrest without warrant).	(Summons)	(Bailable)	(Not compoundable).	(Imprisonment of either description for 2 years, or fine, or both).	(Court of Session, Chief Presidency Magistrate or District Magistrate).
	If the sexual intercourse was by a man with his own wife being under (12) 13 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	In any other case	May arrest without warrant.	Warrant	Not bailable	Do	Do	Court of Session.
376-A	Illicit married intercourse by husband with wife not under 13 and under 14 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or with fine, or both.	Presidency Magistrate or magistrate of the first class.

## BOMBAY.

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Written Statement, dated the 29th August 1928, of Mr. S. K. BOLE,  
M.L.C., Keshawalaya, Dadar, Bombay.

1. There is decidedly much dissatisfaction as to the age of consent allowed in the sections in question, for it is quite natural that with the progress of knowledge and the advanced spread of it there should be progressive change in the opinions of the people at large and that they should think that the age limit allowed is too low.

2. It is desirable to make an advance on the present law, that is, the age limit should be increased for the following reasons:—

- (1) Nature and physiology are against cohabitation with a girl of tender years, when she hardly feels any desire for it; and she is not in a condition to realise the consequences to herself and the society at large, owing to the want of proper education, which she is not supposed to acquire in her tender years.
- (2) The need for female education is more and more keenly felt and more girls go to school; any drain, therefore, on their constitution consequent upon their connection with men, is sure to come in the way of their acquiring higher education.
- (3) Even in the case of poor girls it is not desirable, in that they are employed in factories and other kinds of work when they are of tender age; and scope of employment for such girls has been steadily increasing owing to economic advancement.
- (4) At present parents as a rule are less anxious to get their girls married before they are old enough to understand the duties of married life.
- (5) For reasons mentioned in paragraphs (2), (3) and (4), girls of tender age move about more freely than before and hence they should be protected by law, and hence the age of consent in the case of strangers should not be less than 18 years. In ordinary law any transaction made by a girl below 18 is reckoned as null and void, for the simple reason that she is not supposed to reach majority and is not supposed to be able to realise all the consequences of any such transaction; much more therefore, she must be reckoned as not fit to give her consent regarding her physical, intellectual and moral condition.

3. Bombay being thickly populated and all sorts and grades of people being crowded here there are ample opportunities for men and women of doubtful characters to seduce girls of tender age and hence cases of seduction of girls for immoral purposes are often heard. Hence the limit of age of consent raised to 14 is not very effective. It should be raised to at least 18.

4. It is merely mockery to allow a husband to cohabit with his wife when she reaches only 13, and expect any protection to the ignorant and helpless girls.

(1) Postponement of consummation is not possible when girls of tender age are once in the clutches of impatient husbands who hardly realise or care for the evil consequences from cohabitation with tender girls who have not been developed even though they reach puberty; and even the relatives of both the parties have hardly any foresight in this connection, for they generally entertain the wrong notion that puberty in the case of girls indicates that they are fit for cohabitation.

(2) Stimulation of public opinion will not avail much.



(3) The real remedy, therefore, is that any marriage before a girl reaches majority (18 years) should be reckoned as a crime by law. If law declares that any contract made by a woman before she reaches majority (18) is null and void, why should the contract of marriage should be an exception to the general rule?

5. A Hindu girl as a rule reaches puberty at 14.

6. (1) Among Hindus in the case of married girls cohabitation is not generally allowed before they reach puberty. Cases are, however, often heard in which tender married girls are maltreated by their husbands, generally when the latter happen to be advanced in years or go in for a second or third marriage with girls of tender years, their parents caring more for gains than their girls and their husbands brutal enough to consider their wives as mere chattel.

(2) As the general idea among the Hindu is that puberty is a sure sign in the case of girls that they are worth cohabiting and as even some of their religious injunctions require that consummation ceremony must be performed immediately after a girl reaches puberty, and that those who fail to obey this rule commit sin.

(3) They do not care whether a girl has reached 13 provided she reaches puberty.

7. Among Hindus, as said above, the practice is to allow cohabitation immediately after puberty in the case of married girls owing to religious injunctions. But in some cases this unhealthy and injurious injunction is violated without caring for any sin attached to it.

8. Garbhadan ceremony is generally performed immediately after a married girl reaches puberty. It never takes place before puberty and it is not reckoned as a part of marriage ceremony in our part of the country.

9. Attainment of puberty, as said above, cannot be taken as a sufficient indication of physical maturity to justify consummation of marriage. A girl generally attains proper physical development and fitness for cohabitation after 18 years; sometimes a girl of weak health requires even 21 years to reach proper development.

10. A girl must as a rule reach 18 before she can be said to be competent enough to give an intelligent consent to co-habitation with a due realization of consequences. But unfortunately for the Hindu girls their relatives being ignorant and short sighted induce or force them to give such consent.

11. There are numerous cases in which untimely cohabitation and consequent child bearing have sapped the constitution of the girls at tender age. They are either crippled for life, or incur such diseases as take them to the grave quite prematurely and their progeny is very weak, ill developed and puny.

12. Early consummation and consequent early maternity are really responsible for high maternal and infantile mortality. In Bombay these effects are generally observed; and as the children born of such hasty consummation are weak and ill developed one cannot expect much physical or intellectual development and progress.

13. People among whom education has spread are really conscious of the evil effects of early consummation; and any law raising the age limit is sure to be hailed by these people, and even the uneducated persons will not revolt against the law, as they are generally guided by educated people.

14. As the Hindu parents are as a rule superstitious and ignorant, they are anxious to see their children bearing children to perpetuate their line. Particularly the birth of a grandson is anxiously looked for. Hence, they encourage early consummation at any risk.

15. In a city like Bombay there is not much difficulty in determining the age of girls for there is a fairly efficient system of registration of births. If in the mofussil the same system is rigidly brought into force difficulty in this connection will be materially minimised.

16. If the higher age of consent is legalized much of the difficulty will be removed.

17. Extra-marital and marital offences should be dealt with equally. No exception should be made in cases of marital offences. The punishment already provided for in the existing law need not be changed.

18. No difference in the procedure of trials should be observed.

19. There cannot be better safeguards than what are now laid down.

20. Both kinds of legislation are required. Public opinion is generally in favour of raising the age limit as well as age of consent.

21. Legislation is essentially needed; for though it is a fact that education is gradually spreading, people in general are loth to violate the customs in vogue for centuries.

**Oral Evidence of Mr. S. K. BOLE, J.P., M.L.C., Honorary Secretary  
of the People's Union, Bombay.**

*(Bombay, 20th October 1928.)*

*Chairman :* Are you connected with any social reform movement in Bombay?

A. Yes; I am the President of the Mahajan Aikyecheu Sabha.

Q. What are the objects of the Sabha?

A. Upliftment of the masses generally.

Q. How long has it been in existence?

A. For the last 30 years.

Q. Is this your personal opinion or is it the representative opinion of the Sabha?

A. The views contained in the memorandum are my own personal views.

Q. Have you any knowledge of village life?

A. Yes; I come from a village in Konkan. I am in touch with village life.

Q. Do you think that the law of the age of consent which has been raised to 13 by the amendment of 1925 is known in the villages?

A. It is not known.

Q. Would you say that of Bombay also?

A. Even here amongst the backward classes it is not known.

Q. Have you reason to think that in the city of Bombay amongst the backward classes there are marriages taking place when the girl is below 13 or 14 and consummation also takes place before that age?

A. Marriages take place before 12 or 13 and consummation about 12 or 13, but not before puberty.

Q. What is the general age of puberty?

A. 13 or 14.

Q. Do you know what is the age of puberty amongst the Telugus is?

A. I think it is the same, that is 13 or 14. The marriage age is also the same.

Q. Have you any wide acquaintance with the working classes?

A. I am working amongst them for the last 20 years.

Q. In what way?

A. As a social worker.

Q. Have you got any institution for that?

A. Yes; the Hitakarak Sabha of which I am Secretary. I am connected with the Bombay Textile Workers' Union also.

Q. Would the age of marriage and the age of consummation amongst the working classes be just about what you have said?

A. Yes; it is just the same.

Q. And you think that the age of consent law is not known even amongst them?

A. No; not at all.

Q. Have you reasons to think that consummation amongst them takes place before 13?

A. It takes place after puberty. Sometimes it takes place before 13. It takes place also between 12 and 13 but always after puberty.

Q. Are you therefore of opinion that the law of the age of consent within the marital state is violated, and that there are cases of consummation before 13?

A. Yes; there are breaches of the law.

Q. Have you ever known such cases coming to light?

A. No; not in my knowledge.

Q. Why have the cases not come to light?

A. People do not know what the law is.

Q. Are there any other reasons besides this?

A. I do not think that there are any other reasons.

Q. Do you think that if the law were largely made known and wider publicity given, it would be effectual?

A. Yes; if proper steps are taken.

Q. What steps would you suggest to make the law effective?

A. Investigations should be made and the people informed what the law is.

Q. How to make investigations unless cases are known? The difficulty is to bring to light such cases. Can you suggest any remedy for that?

A. I think that if social reform societies are asked to take up the work they will do that.

Q. Would the society of which you are an office-bearer undertake to do it?

A. I cannot say exactly.

Q. Do you think that the age of consent within marital relations and also the age of marriage should be 18?

A. Yes.

Q. Do I understand you to say that you want the age of consent law as well as the law penalising marriages?

A. Yes; I want both, and I would fix the age at 18.

Q. Do you think there is any chance of the age being taken peaceably by the people?

A. I think that the time has come for the age being fixed at such a high figure. Even now marriages do take place after 18.

Q. But the number of such marriages cannot be large and certainly not amongst the backward classes. Is it not?

A. I think there are many such cases.

Q. Do you think that the public will generally accept 18?

A. There will not be much opposition to it.

Q. What would you have for extra-marital cases?

A. The same age.

Q. Do you think that at 18 a girl is capable of giving intelligent consent?

A. Yes.

Q. Is that the reason why you think that the marriage should be fixed at 18?

A. Yes; because girls below 18 do not understand the responsibilities of married life.

Q. We have been told that there is a great deal of opposition in orthodox quarters, and even amongst the backward classes, to an advance in the age to the extent that you suggest and even to 16.

A. No; I know of no such opposition.

Dr. Beadon: In paragraph 11 you say that there are numerous cases in which untimely cohabitation and consequent child bearing have sapped the constitution of the girls at a tender age. Would you mind giving us details of one or two cases in your personal knowledge?

A. Particularly in the Bhatia community in Bombay I have seen such cases.

Q. At what age are the girls in the Bhatia Community married?

A. I know of cases in which girls give birth to children at 12 or 13.

Q. How many such cases have you come across in the last 2 or 3 years?

A. I have seen more than 2 or 3 cases.

Q. Did the girls suffer or did they do well?

A. They suffered very much and some of them have been crippled for life.

Q. Is the Bhatia community a backward community?

A. No; they are a rich community.

Q. What about the infants in such cases?

A. The infants do not generally survive.

Q. You say that the need for female education is keenly felt. Do you find that the girls of the educated classes are weak in health?

A. If the marriages take place after 16 or 18 the health of the girls is all right.

Q. Do you do welfare work amongst men only or amongst women also?

A. Amongst men only.

Q. Is there any welfare work carried on amongst women?

A. Yes; some mill-owners have established their own welfare associations for women.

Q. In your association do you not take up this question of marriage law?

A. No.

Mrs. Nehru: You say that men and women favour early consummation of marriage for their children. Is that very common or is it confined only to certain classes?

A. It is very common.

Q. Who are the people amongst whom there is discontent as regards the age of consent?

A. It is limited to the educated classes. I mean those who are educated from the backward classes also.

Q. Whose number is greater; the number of those who want this reform or the number of those who are for early consummation?

A. Of course it is a fact that the number of those who want this reform is not more.

Q. Do you think that the largest number is of those who are indifferent?

A. Yes.

Q. Do the educated people know what the law is?

A. Yes; but even they are indifferent in regard to bringing such cases to light.

Q. By raising the age from 13 to 18 how will cases come to light?

A. There will be much difference between 13 and 18 and people will come to know. And if some associations are given power to make investigations cases will come to light.

Q. Do you propose any alteration in the punishment and procedure of these cases?

A. No.

Q. What punishment would you have between 13 and 18?

A. The same punishment as at present.

Mr. Mudaliyar: Are you in touch with the labouring classes?

A. Yes.

Q. Are you their representative in the Bombay Legislative Council?

A. Yes; I am their nominated representative.

Q. You are for late marriages.

A. Yes.

Q. We have been told that the labouring classes are generally very anxious to dispose of their daughters because they do not want to have the burden and responsibility of maintaining an unmarried girl. Is that so?

A. Unmarried girls are made to work in factories for their maintenance and they are exposed to great risks.

Q. Are there many girls working in the factories at 14?

A. Yes.

Q. What is the usual age at which labour class people have their girls married?

A. Generally from 12 to 18.

Q. At what age do the largest number marry?

A. At an early age; very few beyond 14.

Q. What is the reason for their marrying at an early age?

A. Custom.

Q. Do you think that labour class people will accept legislation fixing the age of marriage at 18?

A. I think so.

Q. What about the orthodox classes?

A. Orthodox classes will of course raise a hue and cry.

Q. Is the orthodox section very large?

A. Not very large; but when any reform is contemplated they get up a fictitious agitation. For instance in the School Committee of the Bombay Municipality it was proposed that there should be no distinction about drinking water. But the so-called orthodox people held a huge meeting and all the bazars in the city were closed. That meeting was very largely attended.

Q. Why do you think it was fictitious?

A. Because in the meeting there were many people who do not take interest in the matter at all.

Q. But the people were there all the same. You cannot say that the number of people who attended the meeting was fictitious. Can you?

A. What I mean to say is that people went there simply for the sake of opposing for opposition's sake.

Q. Do you mean to say that the people who attended the meeting were not anxious?

A. No; they were not anxious.

Q. Do you mean to say that a similar agitation will be started in the case of the fixing of the marriage age?

A. Yes.

Q. Do I understand you to say that while in their own families they may not follow the orthodox ways and customs they will still oppose any advance simply for the sake of opposition?

A. Yes.

Q. Why do you want the marriage age to be fixed at 18? Do you not think that it will be sufficient if the age of consent is raised?

A. I think that if the age of marriage is raised to 18 that will be a better safeguard than raising the age of consent.

Q. If the age of marriage is fixed at 18, then why do you want the age of consent in marital cases?

A. There will be no necessity.

Q. Do you think that to prevent the present practice of marriages at 13 and 14 it will be better if the age is fixed at 18?

A. That is for the committee to say.

Q. You said that there should be an investigation about offences against the age of consent. Do you suggest that the offences in the marital state should be made cognisable?

A. If the police are authorised to make investigation higher officers only should be authorised.

Q. How do you think that cases will come to light? Do you not know that the offence is so closely connected with the domestic life of the people that very few people will be interested in bringing the cases to light?

A. If some social reform bodies are asked to take up such work cases will come to light.

Q. Do you think that social reform bodies will take up this work?

A. Some of them at least will do so.

Q. Do you think that there will be unanimity of opinion in the Association in the launching of any particular prosecution. Do you not think that it will add to the causes of division already existing in the Associations?

A. There will be division.

Q. You say in your memorandum that the registration of births in the city of Bombay is very satisfactory. May I know if you have first-hand knowledge?

A. As soon as a birth takes place the people are required to report it to the municipal sepoy or peon. These peons are posted in certain places in the different wards. They are required to go round the wards and register the births and deaths.

Q. Are these peons literate?

A. Yes; they can read and write.

Q. Is there any penalty attached in cases of omissions to report?

A. Yes.

Q. Supposing a man says that he reported the case but the peon says that it was not reported, whose word will be taken?

A. Such things do not generally take place.

Q. Does this register contain the name of the child?

A. No.

Q. Would you make the offences in the marital state compoundable?

A. No.

Q. Even with the permission of the court?

A. Supposing there is no injury, it may be compounded.

Mr. Mitra: What is the name of the Sabha of which you are President?

A. Mahar Aikechu Sabha.

Q. What is the membership of the Sabha?

A. About 300.

Q. May I take it that though you are giving your personal views, the opinion of the members of the Sabha will be more or less the same as your views?

A. Some of the members will agree with my views; but not all.

Q. Has there been opposition in your Sabha to this measure?

A. This was not placed before them.

Q. You think that the age of marriage should be fixed at 18 for girls and that the age of consent within the marital state is not necessary in such a case. But do you think that if it is not possible to have a marriage law, then there should be a law for the age of consent?

A. Yes.

Q. In case we are not able to have a marriage law, it has been recommended that the guardianship of the girl which is at present in the husband, might be vested in the parents of the girl till she attains puberty or till she attains the age of 16 or 18 whatever is fixed. Do you agree?

A. I would certainly recommend that.

Q. You refer to some religious injunction. Is it about ante-puberty marriage or ante-puberty consummation?

A. Ante-puberty consummation.

Q. Do you think there will be much agitation in the country if the age of marriage is fixed at 18?

A. No.

Q. Have you had any occasion to ascertain the views of the masses on this subject?

A. We have carried on propaganda on these lines and we have found they are for raising the age of marriage to 18.

Q. In paragraph 10 you say that the relatives of Hindu girls being ignorant and shortsighted induce or force them to give such consent. What do you mean?

A. In some cases even when the girls are not willing the parents ask them to submit.

Q. In such cases in case there is a trial would you hold the parents responsible as abettors?

A. I would not hold the parents responsible, because it is at the instigation of the husband of the girl that they induce the girl to submit.

Q. What is the system of registration in the mufasal areas?

A. As soon as a child is born a report is made to the village patel.

Q. Are the names of the children given?

A. No; even here in Bombay you do not find the names.

Q. There is a suggestion that the names of the children might be entered in the register on a supplementary report being made by the parents. Do you agree?

A. The names might be more conveniently entered in the vaccination register at the time of vaccination.

Q. Do you think that it can be adopted in the villages?

A. Yes.

Q. In some of the Indian States there is a marriage law; but there are also rules for exemption in certain special cases; for instance when a girl is

without any parents or there are other special reasons. Would you like to have such exemptions in the case of marriage law?

A. Yes.

Q. In Baroda the punishment for breaches of the law of marriage is fine only. Will you recommend it here also?

A. Yes; fine would do.

Q. At present the punishment in the case of offences against girls below 12 is transportation or 10 years and between 12 and 13 it is two years. Supposing the age of consent is fixed at 18 do you not think that the punishment in cases between 13 and 18 should be lenient?

A. No; I do not think so.

Q. There is a paucity of cases coming to court and it is pointed out that one of the reason is the rigour of sentence in the law. Apart from relatives other people also do not want that the boys should be sent to prison. In cases where there is no physical injury would you not recommend that the punishment should be fine only?

A. No; I think there should be rigorous imprisonment in all cases.

*Maulvi Muhammad Yakub* : You say that there is decidedly much dissatisfaction. May I know since when this dissatisfaction has been more vocal?

A. Since the spread of education.

Q. How long?

A. For the last six years or so.

Q. You might probably know that the age of consent was raised from 12 to 13 in 1925. Was there any dissatisfaction then?

A. People then wanted that the age should be raised to 18. They were not satisfied with the amendment of 1925.

Q. You say that Bombay is thickly populated and all sorts and grades of people crowd, and there are ample opportunities for men and women of doubtful characters to seduce girls of tender age, and hence cases of seduction of girls for immoral purposes are often heard. Do you not think that in the circumstances there would be a risk of the girls becoming immoral if you postpone marriage till a very late age?

A. But the law will be there to punish offenders.

Q. Do you mean to say that because there would be a law the offence will not be committed?

A. Yes.

Q. At what age do you think a girl will be fit to become a mother or wife?

A. At 18.

Q. To what community do you belong?

A. Bhandari community.

Q. Is your community an advanced community?

A. No; it is a backward community.

Q. Have you noticed any difference between the children born when the mother is 14 or 15 and the children born when the girl is 18 or 19?

A. I have noticed a vast difference. The children born at the age of 18 are more healthy.

Q. Is infant mortality very large in your community?

A. It is generally so in all communities.

Q. In Bombay there is a large number of Parsis. They are an educated people and they marry their girls at an advanced age. Do you know if infant mortality is least amongst Parsis?

A. Yes; it is least amongst Parsis.



Q. You say that amongst the Hindus there is a religious injunction that cohabitation should be allowed immediately after puberty. Can you cite any religious injunction to that effect?

A. There is a religious injunction to the effect that the Garbhadan ceremony should be performed immediately after puberty.

Q. Does this include cohabitation?

A. Yes; after puberty the husband is allowed to cohabit with his wife at the Garbhadan ceremony.

Q. Is that not a permission and not an injunction?

A. But it is taken to be injunction.

Q. Can you recite the particular injunction?

A. No; I cannot.

Q. You say that extra-marital and marital cases should be treated equally so far as punishment is concerned. To whom would you give the right of complaint in marital cases?

A. To the girl herself or her guardians, or parents.

Q. Do you not know that in some cases the parents of the girls are not able to know about the offence?

A. They generally come to know about it though it may be some time after the offence has been committed.

Q. In some cases the girls are married in places away from the parents' house; how will the parents know then?

A. They will come to know later on all the same.

Q. Do you think that the girl or her parents would complain against the husband?

A. I cannot say that.

Q. Will not the law become a dead letter if the right of complaint is given to the girl or her parents?

A. That is why I have suggested that some associations might be given the right of complaint and investigation.

Q. If the husband is sent to jail on a complaint or at the instance of the wife do you not think that their domestic relations would be seriously affected and the husband will, after he comes back, desert his wife, and will not the girl's life be ruined?

A. I think such offences will not take place if the law is there.

Q. There are laws about murder, decoity and other offences. Do you think that the existence of the law prevents such offences from being committed?

A. These cases are quite different.

Q. How are they different, and how will the law be effective in the case of the age of consent?

A. In the case of the age of consent if people know that there will be punishment for infringement of the law they will not commit the offence.

Q. Do they not know that there is punishment for robbery, dacoity and other offences?

A. There are other circumstances which induce the people to commit the offence; for instance there is sometimes the compulsion from necessity or otherwise.

Q. Do you not think that in the case of cohabitation also there may be compulsion?

A. That should be checked.

Q. How?

A. By enacting this legislation.

Q. How can the law stop an offence?

A. I think in this case the law can stop the offence.

Q. You know probably that in Indian houses the boy cannot have seclusion unless it is allowed or permitted by the parents. Therefore the parents are the chief agents in bringing about the seclusion. They are in fact the real culprits or guilty persons. Why then do you not punish them?

A. I think if the law is enacted it will have some effect on the parents also. The parents will take care to see that the boy is not punished.

Q. Even now there is a law to the effect that if the boy cohabits with the girl before 13 he will be punished. Why then has it not been effective?

A. The law is not known.

Q. How do you know that this law will be known?

A. If steps are taken to give it wide publicity it will be known.

Q. What are the measures you would suggest to make it known?

A. By beating to tom-toms, distributing hand bills and so on.

Mr. Bhargava : Do you recommend that unless the law is publicly known it should not be put in force?

A. No; I did not say that.

Q. Are you of this opinion that the law should first be enacted and publicity given after that?

A. Yes.

Q. In that case do you not think that people who do not know the law will come under the clutches of the law?

A. The people will come to know the law if steps are taken to inform the people as soon as the law is published.

Q. Is there divorce prevalent in the labouring classes?

A. Yes.

Q. Supposing the husband deserts the wife, she can sue the husband for restitution of conjugal rights. Can she also divorce the husband?

A. No; only the husband can divorce the wife, and not the wife the husband. But there are certain communities where the wife can get a divorce from the husband on account of cruelty and similar reasons.

Q. So far as maltreatment is concerned, is it a good ground for divorce for the wife?

A. Yes.

Q. What are the communities in which the system of divorce obtains?

A. Communities like the Bhandaris and Mahars. It does not obtain in the higher classes.

Q. Supposing the law of the age of consent fixes the age at 25; do you think it will work?

A. No.

Q. Nor will the marriage law work because people will have to practise it.

A. If the law is there people cannot break it.

Q. At present the marriage age is 11, 12, 13 or 14. According to Hindu law the age of maturity of a girl is 16 and according to Muhammadan it is 15. Do you think then that if the age of marriage is fixed at 18 there will be no dissatisfaction?

A. That would be in the interests of the communities themselves.

Q. That is a different matter. But will there be dissatisfaction or not?

A. Amongst the Hindus I do not think there will be heart-burning. About the Muhammadans I cannot say.

Q. Do you think that if the age of consent in extra-marital cases is fixed at 18 seductions will not be so frequent as they are now?

A. It will be less because people will be law-abiding.

Q. In non-marital cases the parents or guardians of the girl do not exercise any sort of control or right over the girl. But in marital cases the parents take good care of the girl in the best interests of the girl herself. Do you not think that in marital cases the age can therefore be fixed at 16 if the parents are alive?

A. Sometimes the girls are made to marry against their will.

Q. Do you mean to say that the girls cannot use their discretion unless they are 18 and therefore the age should be fixed at 18? In other words are you in favour of the selection being made by the girls themselves?

A. At least their consent is required and has to be taken. At 16 it is not possible.

Q. Medical opinion says that if the girl gives birth to a child at 16 no harm will come to the girl or the child. Would you even then have the age fixed at 18?

A. Yes.

Q. Did you place these facts before the society when the discussions took place and did they agree that 18 should be the age of marriage?

A. Yes; we have discussed these questions at our meetings.

Q. Did you discuss the particular about the age being fixed at 18?

A. No.

Q. Then your personal view is that the age of marriage should be fixed at 18 and you do not think even your society would support it.

A. I think many people will agree because even now marriages actually take place at 18.

Q. How many?

A. The number is increasing.

Q. I think it must be half per cent.

A. The number is however increasing.

Q. Have you got any experience of villages outside Bombay Presidency?

A. No.

Q. There in the rural areas marriages at or beyond 18 are unknown. Here in the rural areas do marriages take place after 18?

A. Yes.

Q. Is it correct to say that amongst the labouring classes the girls attain puberty at a much earlier age? What is the age of puberty amongst them?

A. Generally about 13.

Q. And in the non-labouring population?

A. About 14.

Q. According to the Hindu law a girl can adopt a son at the age of 16 though she is not then a major according to the Majority Act. Yet she is able to adopt a son. In view of this would you change your opinion and fix the age at 16 so far as marital cases are concerned?

A. Even in cases of adoption she may be legally entitled to adopt, but she is not able to make a proper selection. But I think in marital cases the age of consent should be 18.

Q. Do you know any other country in the world where the age limit is so high as 18?

A. No.

Q. In some of the Indian States the age limit is 14 and the States are regarded as advanced ones. Would not 16 be sufficient here in British India also?

A. There would be no proper development unless the age is 18.

Q. So far as physical development is concerned, even doctors are of opinion that 16 is the proper age for marriage.

A. Even doctors differ in their opinions.

Q. You said that so far as the breach of the marriage law is concerned you would be satisfied with fine only. But in the Baroda State the experience has been that the fines are considered to be part of the marriage expenses. In rich people fine will be nothing, and it is amongst the rich classes that early marriages are mostly prevalent. Would you not therefore arm the Court with powers of imprisonment in such cases, and leave it to the discretion of the court to award fine or imprisonment?

A. Yes; I would like to have imprisonment.

Q. You said that the offence might be made non-cognisable. Do you realise that in that case it will not be possible for the evidence to be collected in time and the evidence may altogether disappear and the offender may not be brought to book? So would you prefer that in cases in which the girl is tender the offence may be made cognisable and in other cases it may be non-cognisable?

A. Yes; in cases in which the girl is tender, the offence may be made cognisable but a higher police authority should be made to investigate into the case.

Mr. Kadri: You say that the public are not generally aware of the present law of the age of consent. How then can there be any dissatisfaction prevalent amongst them?

A. The intelligent classes are aware of the law; and there are intelligent persons amongst the masses of the people also.

Q. How do you know that there is dissatisfaction? Were there any meetings held in which they said that?

A. Generally when we hold meetings in connection with social reform movements, we discuss these questions.

Q. I find you are connected with two associations. Is the membership of these associations confined to Bombay only or does it extend to the mufassal also?

A. We have got members from several districts. I am myself from the Ratnagiri district.

Q. In the Ratnagiri district is early marriage very common?

A. Yes; but now for some years there has been a little progress.

Q. What is the age of marriage now?

A. In some cases above 18 also. In the majority of cases it is about 13 and 14.

Q. Do you not think that there will be dissatisfaction if the age of marriage is fixed at 18?

A. I do not think so. But people have got to be educated in their own interests.

Q. In the present state of education in the country do you think people will be prepared to have such a big jump?

A. People may or may not be prepared to have such a big jump, but in the interests of the society this requires to be done.

Q. Some people have been advising us to go slowly in these matters.

A. There is no use in going slowly.

Q. Talking of divorces, have you heard of any case in which the wife has asked for divorce?

A. Yes; among the Deccanese and the Mahrattas.

Q. To whom does the wife complain in such cases?

A. To the caste Panchs. Thereupon the Panchs hold a meeting and grant the divorce.

**Written Statement, dated the 21st August 1928, of Sir PURSHOTAM-DAS THAKURDAS, Kt., C.I.E., M.B.E., M.L.A., Bombay.**

1. Yes: But the discontent is confined more or less to the younger generation, especially among the educated classes.

2. The circumstances justifying an advance on the present law are the discontent referred to above, and the admittedly harmful effects of early marriage, at any rate, in the present state of society among Indians. Even from an economic standpoint the evil effects of early marriage are patent, especially among the middle classes in cities. With increasing unemployment and increasing keenness of the struggle for existence, early marriages are fraught with disastrous consequences, and so to the extent to which legislation can be useful in such matters, an advance is indicated.

3. The first part of this question may be answered by the statistics of crime which the Committee will no doubt have before them.

The amendment of the law in 1925, in my opinion, did not go far enough as there is hardly sufficient distinction between a girl of 12 and one of 14. It is not likely that the amendment can be said to have succeeded in the direction indicated. Statistics of crime, however, would give a better guidance in this matter.

Raising the Age of Consent to 18 outside the marital state would, I believe, be an advance sufficiently marked to make the law effective.

4. As indicated above, the raising of the Age of Consent from 12 to 13 was hardly a sufficient advance to bring about any tangible results. It has, to a certain extent, stimulated public opinion, but beyond that I do not believe it has achieved any important results.

5. The usual age of attainment of puberty, i.e., appearance of menstruation and possibility of conception varies between 12 and 14. As a rule, this does not differ in different castes, communities or classes of society. However, the age does depend upon the environment or atmosphere in which girls are brought up.

6. Cohabitation is not uncommon soon after puberty. Among many classes of people cohabitation before puberty is rare, though not unheard of. Cohabitation before the girl completes the age of 13 is also rare, but not unheard of. Very few cases of this kind come to court for obvious reasons.

7. While religious injunctions may be quoted for early consummation of marriage, before or at puberty, and in a few cases, the *bona-fides* of the authorities quoting them cannot be doubted, I am afraid, it is not so much religious injunctions, as a certain amount of social inertia, or innate conservatism which is responsible for the early marriages, leading up to early consummation.

I am not aware of any religious penalties enforceable in this world beyond what may be the effects of rooted caste prejudices, for breach of the religious injunctions.

9. The attainment of puberty is not any indication whatever of physical maturity to justify consummation of marriage. The onset is followed by various changes of growth in the reproductive organs, in the secondary sexual characters, in the general configuration, and vitality of the body, and to attain complete physical maturation takes at least two to four years after the so-called attainment of puberty. This is seen in the fact that the menstruation at the beginning for the first year or more is very irregular, may not appear for several months and may be scanty. It is only after a year or more, in the average case, that the menstrual functions settle down regularly.

Allowing then, for these changes in the whole body after puberty, at least four years should elapse before consummation should take place to avoid any injury to the health of the mother or her progeny. The age, therefore, will vary with the individual person, and to be on the safe side, should be raised at least to 18 years. The progeny of mothers under this age is apt to be unhealthy and weak. The mother herself would suffer considerably if

she starts conceiving at the early age of 14; by the time she is 20, all her sexual life is over, as the sexual organs get exhausted too soon. In order, however, to meet the present state of public opinion, I propose that the Age of Consent should be 16 years within, and, 18 years, without, the marital state.

10. A girl below the age of 18 is not competent to give an intelligent consent to cohabitation with a due realisation of consequences. This appears to be rather on the extreme side, but it is really not so. If the atmosphere round a girl is what it should be, no idea being allowed to enter her mind about sexual cohabitation, the instinct will not be prematurely stimulated as it now is. Because of the environment and early marriage, our girls think that they are competent to consent with a due realisation of consequences. But a few years are quite sufficient to disillusion them.

11. The professional man sees examples every day in practice of lives ruined not only of the mothers, but of the progeny as well, as a result of cohabitation before puberty or soon after, but before full physical development. It is possible to foretell the consequences, and the final result of the bad health of these girls in a large number of cases.

Take the age of 12 or 13 for example :

Firstly: the external sexual organs are too tender and are bound to be injured during intercourse at least for the first few times. Time and again this has been admitted by patients, according to my information from friends in the medical line. The result, even if the injury is repaired, is a deep-rooted sexual neurasthenia, a miserable state of affairs for the whole of the future welfare of the patient, and starting many cases of hysteria which are very difficult to treat later.

Secondly: over-stimulation and congestion of the internal sexual organs, especially the ovaries and the early exhaustion of these consequent to too early stimulation.

Immature ova get fertilised giving rise to immature embryos, and if these go on to full term, infants with a hereditary weakness result.

Thirdly: crippling of the mental development from the very beginning, too often seen to require proof.

12. There is no doubt whatever that the early consummation and early maternity are responsible to a considerable extent for high maternal and infantile mortality. The figures of the Western countries amply prove this.

There is still *less doubt* that the intellectual and physical progress of the people are vitally affected by it. The handicap is from the earliest beginning and is being increased at every stage.

14. No.

15. The difficulties referred to would be minimised if the Age of Consent is materially raised say, to 16 within and 18 without the marital state.

16. The margin of error in determining the age in connection with offences under sections 375 and 376, Indian Penal Code, can only be materially reduced if the Age of Consent is raised to 16 years or above and not below that. At 14 years the physical development is not complete in a larger number of girls.

17. I would. The nature and amount of maximum punishment might be determined by experts in criminal law.

I suggest that for offences within the marital state, the maximum punishment should include imprisonment of either description if the girl is under 13, and a heavy fine only, if the girl is over 13, but under 16 as proposed by me.

For extra-marital offences, the maximum punishment would no doubt include imprisonment in any case.

18—19. The question can best be answered by experts in criminal law and procedure.

20. Penal legislation fixing a higher Age of Consent rather than legislation fixing the maximum age of marriage would be more in consonance with public opinion.

21. While social reform and social propaganda are no doubt necessary for attaining the object in view, I believe strengthening the penal law as indicated above will help to a perceptible extent too.

#### *General remarks and conclusion.*

I am fully aware that the problem before the Government in India is not free from difficulties. Whilst from the medical, and generally speaking social point of view, it is imperative that the Age of Consent should be raised without any delay, I fully realise that there are certain prejudices, and even superstitions, which are alleged to have almost the sanction of religious command behind them, which make many honestly believe that consummation of marriage is necessary immediately after puberty is reached. That this view is wrong need hardly be reaffirmed. But the length of period over which this custom has lasted, giving it almost a religious colour must not be overlooked. I believe that with the spread of education and with increased toleration in the observance of social customs, the present state of affairs is bound to give way to the more enlightened and correct view, which is at present looked upon as the social reformers' view in India. Unfortunately the whole level of the society amongst Hindus and Muhammedans requires to be raised in order to make this a *fait accompli*. I am not one of those who look forward to the ideal state of things being feasible in five or ten years. But I do believe that nothing can be achieved in this direction unless the Government, with the sanction of the legislature, give a lead in these matters. If, therefore, the legislatures in India agree to a higher Age of Consent, I think that age should be put on the Statute book. I would suggest for this purpose that this question be discussed by a resolution moved by the Government in *each* Provincial Council. The debate thus raised would be instructive and the result a good guide. I believe that any such change in the Statute must be made by the Central Legislature. But the opinion expressed by the Provincial Councils will be good guide to the Central Legislature, and I think the age to be fixed upon for *immediate* change should be based upon the opinion expressed in the various Provincial Councils. The next step may be taken a few years later and thus the ideal that I have indicated above would be reached.

Whilst I am anxious to give every consideration to the views of the so-called orthodox party, I do not think too much attention should be given to that section, and I certainly would support any advance towards the ideal forthwith with the safeguard suggested above.

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#### **Oral Evidence of Sir PURSHOTAMDAS THAKURDAS, Kt., C.I.E., M.B.E., M.L.A., Bombay.**

*(Bombay, 20th October 1928.)*

*Chairman:* You have not given a reply to the second part of question No. 20, *viz.*, which of the alternatives would you like—the Age of Consent or the minimum age of marriage?

*A.* I have indicated in my previous reply the effect of penal legislation only and it is not very great.

*Q.* I do not think you have referred to the law of marriage. You have referred to the law of the Age of Consent?

*A.* The first part of the question converges on the Sarda Bill and I certainly think that any legislation that could fix the minimum age of marriage would be very effective and I look upon that as the first necessity because I believe that the Sarda Bill whenever it is passed will have much greater moral

effect than any penal legislation that you can have of this nature. Once a marriage takes place an average guardian of a minor wife does not rush to the court. In fact it happens in very rare circumstances. No father-in-law would ordinarily put his son-in-law in a court of law even for serious injury. Therefore if you fix the minimum age of marriage you have a strong deterrent. Over and above, if you have this measure it will be still more effective but I am inclined to give importance to the legislation on the lines of the Sarda Bill.

Q. What age do you suggest for penalising marriages?

A. The minimum for girls should be 14 and 20 for boys. I think we are more concerned with the age of girls than of boys and I look upon that as premature.

Q. If we have no marriage legislation—no law penalising marriages but only Age of Consent raised to 16, do you think that by itself would be effective?

A. It should be very unfortunate. I think the little efficacy that this law regarding the Age of Consent contains would be nullified. I think the marriage law is very essential. If you think consent should not be made available to the men then why not prohibit marriages because after marriage the question of consent would not arise.

Q. It is just possible that the Marriage Bill may not receive the assent of the Assembly. If it is so would you think that the Age of Consent law by merely raising the Age of Consent to 16 would be more effective than it is now?

A. I attach greater importance to the minimum age of marriage. If that factor does not happen to be there then the effect of this Age of Consent legislation would be discounted. The thing which I most desire is legislation on the lines of Sarda's Bill. The age of marriage should be fixed at 14 and the Age of Consent at 16 and then you will see that you are well on the way to seeing things moving.

Q. In reply to question No. 1 you have said that the dissatisfaction is found only generally and especially among the educated classes. Would you say that it is far more vocal amongst women?

A. I myself believe that if the discontent was general among the women of India we would not want legislation. The women of India are now beginning to make themselves heard but in comparatively few places and in comparatively small numbers. When the women of India have begun to get up it is only then that you want legislation. If the women thought that it was unfair there was no necessity for it. I think the agitation among the women of India were more than what it is. It is at present confined to the educated and upper classes.

Dr. Beadon: Could you give us from your personal knowledge any cases in which young girls married early suffered any injury—any cases that you may have seen actually within the last three or four years?

A. I have seen a dozen cases within the last 15 years and particularly so in cases where young girls are married to widowers. I can give one instance of a person whom I know and who stands fairly high in the society in this part of the country. He lost his wife at 26 and remarried when he was 28 with a girl who was 12 years of age, very healthy, extremely well built for her age and ideal in other respects. Within 18 months of marriage the lady's legs got paralysed and I saw that man lifting her up for six months at a hill station. The lady died a premature death at 24 or 25. The man himself confessed that it was due to unfortunate matches. He realised that it was due to uneven match. This is an instance in which I could in confidence give you the name of the man if necessary. Similarly my own family doctor told me of several cases which came to him amongst his own patients known both to him and to me. All that I can say is that I feel that these cases are based on actual facts and occurred not among the illiterate or poor classes but among the well-to-do and educated.

Q. Some people told us that 1/5th of the children die within the first year.



A. In the case which I have given you the first boy was born very weak and after considerable nursing the boy is now of average health. The second boy was born so weak that he died of some disease.

Q. When was the first child born? I mean how long after marriage?

A. Within two years. The subsequent children have never been known to have normal health but the family being very well off could afford to have the best medical treatment.

Q. Is that a common occurrence?

A. Yes. To my knowledge the progeny of such a couple are below normal and require considerable nursing and looking after.

Mrs. Nehru.—Can you tell us whether this law is generally known here?

A. I am afraid if you ask the average man in the street he would not know about it.

Q. Is it confined to educated classes only?

A. Even they know of it only when they have occasion to know.

Q. You have said that it has not achieved any important results. Is it because you think that the age was very small or because of any other causes?

A. It is very difficult to make out the age of girl between 11, 12 or 13. It is really after 14 or even after 15 that a girl really comes to her own and you can make out the age then. The Age of Consent is a question which is known to the police or to the lawyers. I think a girl of 11 was wife for all practical purposes in very good families.

Q. Have you reason to believe that among good families and among low classes this law is broken?

A. Especially amongst the families which are known to be orthodox and who look upon the girl being married before puberty as a sort of religious mandate. There of course there is no question of law coming in their way.

Q. So the law is not acted upon at all.

A. Few are aware of it.

Q. If people know more about it, would it have any effect?

A. But the question has not been raised.

Q. You have said that you would consider it desirable to raise the Age of Consent of a girl to 18 but you consider expedient to raise (it) to 16 by law. Do you mean that it is essential to protect a girl up to 16 at any rate?

A. Yes.

Q. If she is married at 14 and the Age of Consent is fixed at 16 then there will be two years interval. These two years I think are difficult to pass. What other measures would you suggest to make the law operative?

A. I think there should be no further interference except the guardianship of the parents. I think in every family you will find the mother will take care. A mother is very jealous about her daughter being kept away from any such thought. Where custom warrants it and the law does not prevent it, the mother cannot help it. I know orthodox families; they have all sorts of old ideas but they are very sound ideas in many cases.

Q. That will be leaving them to their resources and innocence. Where will the law help?

A. Having been married at 14 your question is that there are two years to pass. Even to-day on an average a Hindu girl does not go to her husband immediately after marriage. There is two months interval and in some cases there is six months interval.

Q. Is that regardless of the age of the girl?

A. In cases where a girl is married to a widower and where they are prepared to set up a house separately even there the interval is three or four months.

Q. Do you think that would put a restriction on the girl?

A. I take it that it would be acted up too slowly. I see the point that you have in mind. I believe that it would be a very good deterrent but it would not be so effective as you would like it to be.

Q. Do you think if we make any changes in the provision of the law by way of reducing punishment and by way of simplifying the procedure of trial there will be facilities provided for those people who want to bring such cases to light?

A. Do I understand that you wish to ask me regarding summary proceedings in this matter?

Q. Yes.

A. Personally I do not think I would make the proceedings summary for the reason that there will be jealousy leading to any such action or there may be some other incentive for such action and I do not like the law should expose the average citizen to any such harassment. I think where the punishment is adequate, either imprisonment or substantial fine, every care should be taken that the innocent one does not suffer. I do not think summary trial in this matter would be sufficient.

Q. Whom would you like such cases to try? At present they are tried by a first class magistrate.

A. I would not lower it at all.

Q. Some people have suggested a trial by sessions judges. Do you recommend it?

A. That means that this sort of trial will only be held at certain places and the parties will have to go long distances. I do not know what the public feeling is regarding first class magistrates in this respect but if there is substantial evidence coming forward that justice is being miscarried then certainly put it to higher magistrates, but I have not thought over it sufficiently to be able to tell you categorically whether I should raise the status of the court before whom these cases should go.

Q. Whom would you give the power of complaint?

A. To the parties concerned. I would not give it to anybody else.

Q. So far as the relatives of the parties or the parties themselves are concerned they have hardly utilised this power. In the present circumstances of the society do you think it is possible?

A. At the same time my anxiety in these cases is to avoid any harassment of parties—in fact jealousy or other grievance against the party by this sort of legislation. This is a domestic affair, we look upon it as so important and strictly speaking we feel that legislation should have asserted in this matter. The public to-day welcomes all sorts of committees and enquires into it but I would not like to recommend anything which would expose the parties to others.

Q. At present everybody has a right to complain and so far no one has used it. Under 12 the offence is cognisable and from 12 to 13 it is not cognisable.

A. If a girl is married at 14 and happens to go and stay at her father-in-law's place because there is the sanction of marriage a neighbour can complain that the law of the Age of Consent has been broken.

Q. To meet that it has been suggested that bonds should be taken from the parents of the girl or the parents of the boy or guardian to keep the girl and the boy separate till the prescribed age.

A. I think it follows automatically. When they know that there is such legislation I would not go further and take bonds. It means interfering too much with the daily routine. The society is now progressing. They themselves know that marriages up to a certain age should not be celebrated and cohabitation up to a certain age is injurious. You at times come across cases which we may call horrible but because you come across such cases you really cannot legislate for everybody on the same lines. You interfere too much.

in the domestic life of people. Society may at the present stage at any rate feel a little exasperated. So I would suggest trying this 14 and 18 for some time. See how it stands at the end of 5 years. When the difficulties are discovered we will have the experience and we will take the next step. But I am not disposed at the moment to say that it is feasible.

Q. Would you agree to this that after the first complaint is lodged and the guilt proved instead of sending the boy to jail bonds should be taken as I have suggested before?

A. I ask what will be the value of that bond.

Q. The offence will not be repeated.

A. If the wife is an ideal Hindu wife, as is generally the case, the bond will have no value.

Q. Therefore I put this question whom would you give the right of complaint?

A. I am afraid I am not at all disposed to give the right to anybody else except those who are the well wishers of the girl and these are her father and mother.

Mr. Mudaliyar: Do I understand you to say that there are many women who feel that progress ought to be made but they are bound by custom and are unable to make a change?

A. I mean orthodox grown up old ladies. They are willing to have a change but they dare not break the custom.

Q. Do you think a law like this would give them the necessary strength to break the custom?

A. Whether it gives them the necessary strength or not it will be deterrent to those who make a fetish of the custom.

Q. If a marriage law is fixed at 14 and the Age of Consent at 16 there will be a number of families in which there will be a desire to preserve the law, they would not have this offence committed and in any case if they do or if consummation takes place before, it would be a sort of Damocles' Sword hanging over them and they can be taken to task. A great majority of the people who obey the law will follow what the law lays down. They know what they are doing if the consent is not allowed.

A. What I am anxious about in these cases is that it will give protection to the young wife against widowers.

A. Hindu mothers will then be able to say, yes that is all right but there is law and I cannot send the girl to you. To-day a widower of 28 or 30 or 32 takes any girl and says marriage has taken place, the time of puberty has passed and she must be sent.

Q. At present the moment a girl is married the husband becomes a natural guardian of the girl whatever the age of marriage may be, but it has been suggested that till the Age of Consent is reached the preferential right of guardianship may vest in the guardian of the girl or those who are the natural guardians of the girl if there are no parents. What do you think of it?

A. I do not know that a boy of 15 marrying a girl of 12 will be able to have control over the girl because he himself is a minor, but I certainly think that until the girl is in a position to give an intelligent consent her guardian cannot be the husband. Even though there may be some as regards the minor husband there can be no doubt as regards the widowers.

Q. I take it from your evidence that you are personally in favour of fixing 18 as the Age of Consent but it is in deference to orthodox view that you are agreeable to fix it at 16 for the time being.

A. Not necessarily to orthodox view. I believe that bearing in mind the way in which people have been brought up, to put up the Age of Consent from 13 to 18 at one stroke of the pen would be a thing, which people may not be able to reconcile and practise, and I feel that 16 is quite a reasonable limit. It has nothing to do with orthodox opinion. If I felt that 18 was necessary I would say fix it despite what the orthodox element may say.

Q. You have suggested that 14 should be the age for marriage. Do you not think the same protection should be extended up to 14 and fine after 14?

A. I said that the amount of maximum punishment should be determined by experts in criminal law. I have no strong views about it. I only say that up to a certain age in order that people may reconcile themselves on the lines that I suggest above. I think up to 14 you may have it as you suggest.

Q. I am referring to the amount of punishment. In the one case it will be fine only and in the other imprisonment. Up to 14 it may be imprisonment and between 14 and 16 it may be fine only. 13 is the Age of Consent at present.

A. Therefore I say that it should be what is finally decided in connection with the Sarda Bill and this Age of Consent.

Q. You have further suggested that the opinion of provincial councils be taken. I want to know how would you give weight to the opinions of the provincial councils. At the moment they have strongly divided camps in this direction. You have got an orthodox man who considers and says you are really ruining our society and our religion. You have got the reformer who says you are too slow and do not move fast enough. You will have to fall back upon the central body. Is it not?

A. If you want the opinion of the associations so many will be coming up and then you will be strong. I therefore feel that the opinion expressed by these provincial councils should be taken into consideration. There will be arguments for and against it which will reflect for the purpose of guidance for the central legislature exactly what the people think. You would not go so much by their decisions as by the arguments advanced which would be useful guidance to the Central Government and the central legislature.

Q. I understand it to be for the guidance of the Central Government. The central legislature may express its conduct as regards the opinions expressed. But how will it be a guide to the central legislature?

A. It should give the fullest weight to every argument advanced in the provincial councils in their discussion. They should not decide on exactly what they think should be but what the country is prepared for. For instance you may find that Bihar and Orissa has put an argument which is peculiar to that province but has a very great effect in itself.

Q. In the Madras Legislative Council a resolution was discussed on the Bill and passed approving the Sarda's Marriage Legislation but the member of the Legislative Assembly from Madras thought otherwise and the strongest opposition came from the Madras members. Therefore the members of the Assembly may not feel bound by the decision or view or arguments of provincial legislatures. Would you put it that it should be binding on them?

A. I would not make it binding on them but if the central legislature did not consider the All-India opinion expressed through these provincial councils their legislature will not carry that weight nor will it be as efficacious as it should be.

Q. That is true where a positive effect has been produced but where a bill has been thrown out by the central legislature the position is different. Supposing the 9 provincial legislatures passed the Sarda's Bill but the Legislative Assembly does not pass it.

A. Then the responsibility lies with the central legislature but I cannot conceive of the possibility of the central legislature throwing it out if the nine provincial legislatures supported the Sarda's Bill, except owing to some reason which has nothing to do with the merits of the case. Now there is a great difficulty about the attitude in matters of social legislation. We do not know where the Government is and in the central legislature difficulty has been felt largely due to the uncertainty of the attitude of Government with reference to the attitude of the non-official side. If the legislation were left to the non-officials alone, Sarda's Bill would have been passed long ago. I do not know if that is the opinion of others.

Q. Therefore would you suggest that if the majority of provincial legislatures voted by resolution in favour of a particular bill like the one we are considering Government's attitude should be determined by the majority opinion?

A. My own opinion is that where the Government are not prepared to take responsibility for any such social legislation they should leave the matter absolutely free to the peoples representatives and Government should allow everybody to vote according to his own conscience including the Government members. Let them vote as gentlemen and as free men as they think.

Q. Would you make the offences in marital cases compoundable either with the sanction of the trying judge or without the sanction of the trying judge?

A. I should say that with the sanction of the trying magistrate it should be made compoundable.

Mr. Mitra: There have been suggestions that if the age of marriage is fixed there will be hardship in certain cases where the old man is dying and he wants to see the boy or the girl settled. In order to meet these it has been suggested that there should be exemptions in special cases and in fact in Baroda there are some such exemptions. Do you recommend such exemptions?

A. I would make exemptions as few as possible and until one is told why such exemptions are necessary I really would not make any exemptions at all. I have heard exemptions being sought for small cases. A man of 22 losing his wife and having 2 or 3 children by the first wife says I want somebody as cook and to look after my children. I would make nobody else's daughter undergo all the privations because this man wants somebody to cook for him or to look after his children. These reasons weigh much with people but I certainly think they are not the reasons which should have any consideration.

Q. One father is an old man and his girl is nearing a marriageable age and the old man is dying. Would that be a fit case for exemption?

A. Exceptions should be very few because exemptions would be sought to be fitted in in every case. If a man has a son of 15 and he wants a feast he would make out a case for exemption. These should only be for the protection of the girl or for the benefit of the girl and will have nothing to do with the boys.

Q. What would you advocate as punishment in the case of infringement of the marriage laws, fine or imprisonment?

A. I think fine will be quite sufficient.

Q. It has been suggested and found from experience in Baroda that fine only means an item in marriage expenses in marrying girls and it is really hardship on the poor people?

A. Would you have any maximum amount prescribed.

Q. We were told by the Naib Dewan of Baroda that in 10,000 cases the fine was paid as penalty. The fine there is Rs. 50.

A. If it were 500 it would be effective, the poor will not be able to pay.

Q. As regards trial it has been suggested by some witnesses that with the introduction of women police as it is in England to investigate such cases the crime would be detected. Do you recommend such a thing?

A. I do not know of any province in India where women police exist. Unless you are satisfied that you can get Indian women into police you would really be adding to the various harassments.

Mrs. Nehru: It has been suggested that we should start a new department of police like the Criminal Investigation Department and we are told that we could find sufficient women in Gujarat. We want to know from your experience whether it is possible to have from Gujarat such number of women.

A. I do not know whether women will be willing to serve as police.

Q. That department will have nothing to do with the police. This work will be the only thing that will be entrusted to that body.

A. I am afraid I have not made any enquiries about it but I believe that what you really want is not women police so much as women who take an interest in this work from the social reform point of view, but the difference is that one will be paid servant to do this work and the other will be a voluntary servant to do the work for the love of reform.

Q. Could you get the right sort of women to enlist for such work?

A. I am afraid I have no information on which I could tell you anything definitely.

Q. It has been suggested that in London it is functioning well?

A. I do not think we can compare India with England but I certainly think if you are employing women they should certainly be Indians and preferably women from the same district. Gujerat women taken to Orissa would be quite useless or Madras women brought to Bombay would be of no use.

Q. We are told that in the female training college at Ahmedabad we have a large number of educated girls who are refused admission because there are no openings. There are more applicants for teachers' posts than there are posts.

A. I am not in a position to say anything about this.

Q. Would you give the right of complaint and prosecution to social reform voluntary associations?

A. No, I must stick to what I said before.

Mr. Mitra: Would you favour summary trials which are restricted to some sort of speedy trials so that it may not take much time. It would of course give a right of appeal and also of second appeal. Do you think such sort of speedy trial in camera will be helpful?

A. Certainly.

Q. Do you think it will be like the law in England restricting newspapers not to report cases of divorce?

A. I do not know whether in the present stage of society a little publicity would do much harm to the society.

Q. The judgment will be published but the proceedings will not be published *in extenso* in newspapers?

A. If it is in camera it would not be published.

Q. In reply to question No. 7 you have said "I am not aware of any religious penalties enforceable in this world beyond what may be the effects of deep-rooted caste prejudices, for breach of the religious injunctions". Do the Shastras merely prescribe some penance?

A. So far as I am concerned I cannot enlighten you about the Shastras. In practice they really do not follow the Shastras which prescribe only pre-puberty marriages. I am afraid that I must ask that Shastras be set aside. It is not a practice anywhere. I cannot agree with the view that a girl should marry at 8 and start consummation at 12. There must be something else meant by it.

Maulvi Mohd. Yakub: Could you tell us from your observation if girls of those communities who marry at a late age are very healthy and if their children are more healthy than the children of the girls who are married at a very early age?

A. There is no doubt about it. They bear the confinement period much more easily than young girls.

Q. At what age are girls in your community married?

A. I can give you instances of my own family. My uncle if he were alive would have been 90 years; he was married at the age of 9. I suppose my aunt must have been 7 or 8. My father was married at 22 when my mother was 13. My eldest sister who is alive to-day and she is about 58 was married at 13, that was in 1884 and my other sister was married between

'13 and 14. I was married at 22 when my wife was 17. My daughter was married in 1920, at 19 years and my son-in-law was 24. My niece was married at 20 and my second niece to-day is 20 and she is yet to be engaged. You see the progress. I know that my uncle who was married at 9 was the strongest opponent of early marriage and child marriage and was most strongly in favour of marrying no girl under 14 and no boy under 20.

Q. At what age did consummation take place in those days?

A. I do not know. In my caste to-day there is no girl married below 17 and no boy is married under the age of 21. They would not think of it.

Q. You fix the age of marriage for girls at 14 and for boys at 20. Don't you think the proportion will not be very harmonious?

A. 4 or 5 years, I think is correct. My own observation shows that if you have 4 or 5 years difference between the husband and wife it is correct. In fact I said to the Chairman 19.

Q. You would not fix the age of marriage at more than 14 at present. Is it for the reason that you would not be able to carry the people with you?

A. It would be too drastic a change for them.

Q. We were told in Gujerat that there are certain communities in which marriages take place only in a certain year and after that no marriage can take place for 10 or 12 years. If such a law is enacted as the Sarda's Bill will it not be hard on those communities?

A. I know this is among the Kombis. Marriages take place after every 12 years when Devi speaks. Mothers take their babies born two or three months back and marry them. I think this is very interesting as a history but very revolting as a custom. While I respect the sentiments of those people I would certainly like them to break it as quickly as possible: I am sure that the community by itself is giving up the custom. You will only be hastening the process and if they are sticking to it you will be forcing them.

Q. As regards offences within marital relations you would not give the right of complaint to anybody else except the girl or her parents or near relatives. Don't you think it will make the law a dead letter?

A. I see that danger but I am not apprehensive so much as that Mrs. Nehru had put some very searching questions but I maintain that this power should not be given to anybody else.

Chairman: Would you like to subscribe to an independent enquiry by a magistrate?

A. No. Some fellow may be a magistrate and he will make the life of people a hell in such matters. Considering things as they were 21 years back we are to-day much better off.

Maulvi Mohd. Yakub: Even within the last three years has any ease come to light?

A. What I submit is that society is automatically advancing now because of the spread of education and the work of social reform bodies.

Q. If society were advancing in this direction would cases have come to light within the last two years?

A. I say comparatively fewer cases of this nature are occurring. In my observation of 30 or 35 years I have come across only one case which is the only case I know of. In exceptional circumstances after a man's wife died there were little children to take care of and the society tolerated it if he married a young wife but now society is against it.

Q. Would you have vigilance societies?

A. Vigilance societies are good so far as they go but I would like no inroads by such societies in private matters. I would rather trust to the good sense of the people.

Q. We are told that Parsis have got separate matrimonial courts who try to decide such cases. Would you recommend that such courts be constituted by other communities?

A. But even the Parsi Courts are a failure. Parsis are a very small community.

*Moulvi Mumammad Yakub:* Difficulty is very often experienced about ascertaining the age of the girl at the time of marriage. What remedy would you suggest for that?

A. I felt at one stage that that was a defect in Sarda's Bill. If you have a general registration of births in India the difficulty will be obviated.

Q. But people say that registration is not satisfactory and not feasible everywhere. You have to fall back upon the examination of the local surgeon. What remedies would you suggest?

A. As far as the age of the girl is concerned it is very difficult to say from mere look, whether a girl is of 12 or 14. Even the doctors find it difficult to give the exact age, and it is only the upper castes that have their horoscopes. The registration of births should be compulsory, should be made more effective and put on a sound basis. It would be useful in other ways also. It can give you figures regarding health and sanitation and such other things, but an enormous machinery will be required.

Q. Even now I think registration is compulsory.

A. It is not so in local and district boards where our teeming millions live. I was enquiring in connection with some other points and I was told that registration of births in districts was very defective.

Q. Would you suggest some machinery to make it more correct and satisfactory?

A. If you can make registration of births compulsory I think it would be very useful for several things besides marriage.

Q. In the registers of birth that are now kept with the municipalities and corporations there is no column for the name of the child. It is only said, boy or girl, and no other particulars are given about the name, etc. Would you suggest that there should be a column for the name also?

A. Yes.

Q. But the name is not given at the time of birth. Do you mean a supplementary entry should be made in the register?

A. It would have to be. Here certain communities don't name the child till the 6th day and certain communities do not give the name till the 40th day. In certain cases the name of the child is given at the place of pilgrimage which may mean a delay of six months or so. In such cases there must be supplementary registration.

*Mr. Pharyara:* You have said that very few cases come to court and even if the law is enacted very few cases will come to court. I understand that the policy should be that very few cases should come and they should be made as examples to act as deterrent so that the life of the girl may not be ruined. What would you say?

A. Yes.

Q. You mean that those who have the right of complaint, the girl or the parents or those interested in the girl, should make a complaint and the district magistrate or any magistrate specially empowered for this purpose may be able to shift those cases and initiate proceedings himself or grant sanction after preliminary enquiry.

A. It would all depend upon the personality of the magistrate.

Q. The magistrates are generally Indians.

A. That is not the point. There may be good Indians and bad Indians and there may be good Europeans and indifferent ones. I am not disposed to agree to outside influences taking interest except with the greatest of safeguards. As you know in the districts there are parties and factions and the District Magistrate will be able to use one party against the other. I would not like anybody to be exposed to that risk. I cannot conceive of a case like the one you mentioned of a girl being mother at 15. It will be talked about and it is a case in which I suppose we may even provide for



some action being taken by the Court itself but not by the District Magistrate.

Q. To avoid that I would make a further suggestion. When a sanction has been given the other party may be able to appeal from that initiation order. Even now we have got certain provisions where sanction appeals are provided under the Criminal Procedure Code. Would it do?

A. You have named some instances where similar action is taken. I will say, this is a matter which affects the society, which affects the family and household of the person. I would like that there should be as little interference as possible. That is the basis on which I go. If the parents of the girl have not cared and if the girl takes it quietly the man need not necessarily be prosecuted. It should act as a preventive more than a punitive measure. I cannot agree to anything like that. I know of cases where young girls have been practically dragged to their husbands' house. Things like this should be preventable by this law. If our experience shows that that is not effective you can devise other methods. The less the interference with the normal life of the people the better. I think people will reconcile to this legislation more readily.

Q. May I take it that there is general reluctance on the part of people to come to Court?

A. There is no reluctance, but the father-in-law would naturally not like to see the son-in-law being punished. He will say it is all very fine, I am not going to expose my son-in-law to the risk of being prosecuted.

Q. So far as the reporting of such cases is concerned should there not be any provision?

A. The details need not be reported. The case may be conducted in camera but the judgment may be reported. All the evidence, etc., need not be reported.

Q. You said in cases relating to the breach of marriage law a heavy fine would be sufficient. We have heard of cases where the husband is a grown up man and the wife is very young. The husband generally buys the girl.

A. You are now referring to 'Kanya Vikria' which is the meanest of crimes. I would recommend the heaviest punishment which the legislature could devise. There is absolutely no justification for this. Any person who is so mean as to sell his girls should be punished as heavily as possible. I only wish that this 'Kanya Vikria' could be prohibited.

Q. You have suggested that for girls over 13 and below 16 the punishment should be heavy fine. Have you taken into consideration the case of N.-W. F. P., where this punishment would not act as a deterrent?

A. It is for this purpose that I said that this should be discussed in the different provincial councils. Besides what would be effective for Punjab and N.-W. F. P. may not at all be suited for other provinces.

Q. What about Madras? You may have to make a distinction there. Will it be difficult to bring it into legislation?

A. It is a matter of detail which would be examined by the persons who are familiar with devising these things. I fully realise that what will be suitable for and effective in the Punjab and the N.-W. F. P. would be most unsuitable for Madras.

Q. Do you mean to say that discretion may be given to the Magistrate to award proper punishment in proper cases and that the offence may be punishable with fine as well as imprisonment.

A. I think so.

Q. You were saying about this question being discussed in different provincial councils. Would you like that there may be one law, but it should be left to the local Governments to apply it, by the resolution of the local council, to a particular province, like the Muslim Wakaf Law and the Transfer of Property Act?

A. The man has only to take a ticket from the place where there is this law in force to the place where there is no such law and he can avoid the

law easily. Suppose in Madras the age of marriage is 12 and in Bombay it is 14, the man from Bombay can easily go to Madras and marry a young girl, and thus defy the law. The girls can be easily transferred from place to place, it is not like property. The same thing would be possible if there is a law in one province and no such law in another province. This can be done with impunity.

Q. Do you mean to say then that simply because Madras is opposed to a particular measure, I mean a Bill like Sarda's the rest of India, that is not opposed to it, will not have it?

Mr. Mudaliyar: Thrust it down their throats.

Mr. Bhargava: That is one way.

A. I have seen opposition to Sarda's Bill in Madras. It comes only from the Brahmin class whose proportion is only 3 per cent. The Central Legislature will take all these details into consideration. But by passing this sort of provincial legislation why should you make Madras for instance the dumping ground for orthodoxy.

Q. If a marriage legislation of the kind contemplated is passed the question would arise about the age of the girl and the boy. In that case would you like to have a register of all marriages?

A. I think it will have to come. It may be useful in other ways also, to prove the fact of marriage in divorce cases and such other things. I think the marriage register will have to follow. At present also in certain classes they have got caste registers in which all marriages in the caste are entered on a payment of half a rupee or one rupee. I don't say that they are very common. But on the same lines a register for marriages will follow, if not now, five years later and I think all these figures and statistics are most useful and instructive.

Mr. Kadri: One of the witnesses at Ahmedabad said that the law was amended only in 1925 and sufficient time had not passed to warrant a further rise and that legislation at such intervals causes resentment. What is your opinion?

A. I see no force in that argument. If we did not complete a thing in 1925, there is no reason why we should not complete it even to-day.

Q. You have talked of elderly people marrying young girls. Do you think that if there is an age fixed for the girl below which such men cannot ask for the restitution of conjugal rights it would be helpful?

A. If these people want a thing done they know how to get it done. They don't seek the assistance of the courts or anybody. I don't think such a law will be effective.

Q. Do you think a man who forcibly takes away or cohabits with a girl will be afraid of the law?

A. It will act as a great check.

### Written Statement of Dr. M. I. BELFOUR, Bombay.

The information I can give the Committee is from two sources—

First, general impressions from 38 years work in India.

Second, facts collected during 3 years research work in Bombay.

I attach less value to the first, because I think mere impressions over a period of time are apt to be untrustworthy. If one sees or hears of a case of first childbirth in a girl of 13 it makes a deep impression, while the many cases of first childbirth at a more mature age are soon forgotten. Hence the frequency and importance of the early cases is exaggerated in one's mind.

In undertaking an enquiry on maternal mortality in childbirth in India, I investigated the age at which the first child was born in 1,112 women delivered in Bombay Hospitals. These were consecutive cases, that is, they

were unselected and were seen during a period of 3 years, 1925-28. The average age of the mothers was 20·5 years. 134 mothers were 16 years of age or younger, that is 16 were 14, 24 were 15 and 94 were 16 years of age. I collected similar data from the report of the Madras Maternity Hospital, and other figures were sent me by a gentleman in Ahmednagar, taken from the records of the Sewa Sadan Maternity Home and from some private families. The results are shewn in Table 1, attached.

In the Bombay cases only 12 per cent. were 16 years or under. The women were of all classes including high caste Hindus. They represent a large section of the public, seeing that in Bombay 25 per cent. of the total births take place in hospitals.

I compared the class of young mothers of 16 and under with those of 17 and over, as regards the incidence of still birth, premature birth and the average infant birth weight. The results were unfavourable to the young mothers. Their incidence of still birth was at the rate of 186 per 1,000 as compared with 83 per 1,000 for the older women. The incidence of premature birth (apart from still birth) was 156 per 1,000 as compared with 121 per 1,000 for the older women. Thus, the young mothers gave birth only to 656 per 1,000 full time living children as compared with 794 per 1,000 full time living children for the older women. These full time children of the young mothers weighed an average of 5·88 lbs. at birth as compared with 5·96 lbs. for the full time children of the older women. The difference is small, but to put it another way, it means that 43 per cent. of the full time children of the young mothers were below the average weight of 6 lbs., as compared with 33 per cent. in the case of the children of the older women.

Many of the young mothers had healthy children without apparent injury to themselves, but as shewn above the results were on the whole unfavourable. The facts stated are shewn in Table 2.

I made enquiries from a limited number of women 250 as to the age at which cohabitation had begun. I received intelligent answers from 186, and of these 50 per cent. had commenced cohabitation at 15 or earlier. The youngest age given was 12. I have no facts to give as to the effect of this early cohabitation on the woman's health.

I consider that early cohabitation and early maternity are responsible for some part of the high maternal and infant mortality in India, and consequently for some part of the poor physique of many of the people. I think on medical grounds cohabitation should not commence before 16, at the earliest.

I should like to draw the attention of the Committee to the need for more careful investigation of problems connected with child birth and infancy in India. Facts such as I have given should be available on a much larger scale and the future progress of the young mothers and their children should be watched. Special workers would be needed for this, as maternity hospitals are too scantily staffed to undertake it. The necessary comparatively small expenditure would be amply repaid.

TABLE 1.  
*Age at first child birth.*

Source of cases.	Number of cases.	Average age.	Percentage below seventeen.	Youngest age.
Bombay Hospital . . .	1 112	20·5	12 0	14
Madras Maternity Hospital .	2 312	19·4	13 8	13
Ahmednagar Sewa Sadan Home.	90	18·2	32·2	14

TABLE 2.

Comparison between older and younger mothers (Bombay).

Age	Number of cases	Still birth rate	Premature birth rate.	Full time Living birth rate.	Average infant birth weight.	Infants. Percentage below 6 lbs.
					lbs.	per cent.
17 and over . . .	978	83 per 1,000	121 per 1,000	794 per 1,000	5.96	33
16 and under . .	131	156 per 1,000	154 per 1,000	656 per 1,000	5.88	43

## Oral Evidence of Dr. Miss M. I. BALFOUR, Bombay.

(Bombay, 24th October 1928.)

Chairman: You belong to the Women's Indian Medical Service.

A. I used to belong to it. I have retired now.

Q. You have, as you say, done 38 years medical work and 3 years Special Research work in Bombay.

A. Yes.

Q. Do you make sure of your authority for saying that in Bombay 25 per cent. of the total births take place in hospitals?

A. Yes. It is from the information got from the Medical Officer of Health Dr. Sandilands. They get Birth Registrations from all the Hospitals and send in Reports for births taken place; and, year by year, roughly speaking, it is about 25 per cent. in the different maternity Hospitals and Homes.

Q. What class of people do generally come to the Hospitals in Bombay especially?

A. It differs in the different Hospitals. In the Cama Hospital it is entirely staffed by women doctors in order to get a good many Mahomedan women and a good many better class Hindu women too; and of course some Christians. In some of the other Hospitals and in the Motlibai Hospital, they had however lower class of women more, the low caste of Hindus and a good many Christians and Anglo-Indians and in the Wadia Maternity Hospital they have a certain number of mill-workers and the people in that part of Bombay are in the mill area.

Q. We are given so many reasons which contribute to the child mortality and mother mortality. What proportion would you put to child motherhood rather than to other causes?

A. Well: it is difficult to say. I think the only way in which that could be found would be by having a careful investigation made of the causes of the infant mortality.

Q. Are they not ascertained up to now?

A. I don't think that any effort has been made to find out what they were. People talk a great deal about it, some say due to bad feeding, some say due to poverty and some say due to bad housing, epidemics, child-marriage and so on, but we have no real evidence to tell us which is the most important. Probably there are some causes that are more important than others and the figures that I have in the paper show that there are not after all a great number of child-mothers at least in Bombay City; yet the

infant mortality in Bombay City is very high indeed. Only 12 per cent. of all the mothers having their first child in these Bombay Hospitals were below 17 years of age and that is not a large number. Yet there is a very tremendous amount of infant mortality.

Q. You suggest that some investigation might be undertaken. Is it the one that you have suggested towards the end of your statement?

A. I think there ought to be investigations, carried out in different centres of India. It would only need organizing. There are now a great many organizations doing child welfare work with nurses and midwives to attend to them. These might co-operate in investigations and undertake to watch all the children born during a year or two and see of what causes they died off. It would be necessary of course to have some doctors specially kept and specially attached because the doctors would have to visit the cases, the nurses would visit the children as often as necessary once a week or once a month; the doctors would have to go round whenever required once a fortnight or once a month to make sure how the babies are keeping and if they find out what the causes of death are and if these were done in the number of different centres for one or two years, then in that case, we will be able to collect a great deal of information as to the real causes of infant mortality. But we want organization and we want facts.

Q. Don't you think that at present the data is too meagre for us to say that this early consummation and early motherhood are more responsible than other causes?

A. Yes; I think the data is insufficient. I think so far as it goes, it is a factor.

Q. What is your experience about the spacing between one pregnancy and another? Do you think that the second pregnancy occurring within a certain time after the first childbirth is more or less injurious?

A. Yes; when it comes too rapidly.

Q. What space would you think would be quite good to say anything shorter than that to be injurious?

A. I think 3 years would be a good interval.

Q. May I take it that after the first childbirth and the second childbirth the interval might be about 3 years.

Q. Could you give us any idea about sterility of these young mothers as compared with women who become mothers at a later stage? Do you think any data on that is available?

A. No; I am afraid no data is available on that.

Q. Do you think we can be able to collect the data in the same way alongside with what you have suggested?

A. Yes; I think it could be collected quite easily. If people who are working had time to make enquiries from women as to the ages at which they had begun married life, they could find out what their past history had been.

Q. You have said that you have no facts to give as to the effects of this early cohabitation on the women's health. Do you think it is possible to collect facts when cohabitation has taken place between girls of 13, 14 and 15 but no pregnancy has occurred till 17 and 18?

A. I think that fact has happened. Sometimes I have observed in this enquiry that even if cohabitation begins about 13 or 14, pregnancy does not necessarily follow for two or three years.

Q. In that case, do you think it would help the solution of the problem we have in hand if we tried to find out the effects of cohabitation minus pregnancy? What is the evil effect on the mothers and their future progeny after 18? Do you think that sort of thing would help us?

A. I think that sort of thing would help us but it would be however difficult to carry it out. I think it can be best carried out at some large dispensary where there is clinical work and where a great many mothers

are coming, if we could have a special worker who would carry on that work and who would visit women in their homes and observe them. It is never so good to trust what they say about the past because their recollections are often so vague. It is always better to go to their homes and watch them for a long time and get the information yourself by personal observation and if some of those dispensaries and hospitals could have nurses attached to them whose business would be to go round and visit the women in their homes under the supervision of a doctor experienced in that matter, then and in that case in the course of a few years a great deal of very important really trustworthy information would be collected.

Q. Don't you think in a city like Bombay there has been no collection of data on these subjects with regard to infant mortality and infant motherhood?

A. I don't think so. Of course, there are facts given in the Health Officer's Report about the causes of infant mortality but it is open to the objection that most of the babies have not been seen by the doctors. The report is given by friends to the clerk in charge of this work and the friends do not know what are the real causes of the death of the baby. They always say it is fever, diarrhoea or something of that kind, but it may not be the correct cause at all.

Q. In connection with figures that you have given, what part do you think venereal diseases play in these cases?

A. Not a very great deal. I was however surprised at that. In the course of our investigations we examined the blood of hundred women who were going to give birth to babies and we found that in a hundred healthy women only 15 per cent. were infected. In 122 cases of both healthy and unhealthy women of all classes it was 18 per cent. That is not nearly so high as is sometimes stated. Of course, when you examine the blood, it is not fair to take people into the hospitals because these are mostly unhealthy women. So our figures ought to be correct for the general population and I don't think that is a very high rate as compared with other countries.

Dr. Beadon: Have you found specially that the early mother is liable to anaemia? Do you find that there is a great deal of anaemia of this kind during pregnancy or do you find it in women over 20?

A. It did occur in the early mothers too.

Q. Was it more in women having a second or a third childbirth?

A. The percentage was 29 per cent. *primâ parac* and 71 per cent. *multi parac*.

Q. Can you give us figures for anaemia under 20?

A. Yes. *I will send you figures for anaemia under 20.*

Q. Have you had anything to do with the finding of ages of girls who have come in your way in work?

A. Yes: When I was in an Indian State I had to do all that. The Police sent all these sorts of cases and cases connected with pregnancy, rape and so on and I had to give my opinion as to the cases and as to the ages.

Q. Do you find that the birth registration is working satisfactorily? Do you find any difficulty in ascertaining the ages?

A. In that part of the country, *viz.*, a portion in Punjab, there was practically no birth registration and no means of finding out the age except by medical opinion. Of course, in Bombay, it is a different matter.

Q. Do you know anything about the birth registration in the city of Bombay? Is it working satisfactorily?

A. Yes. The parents are supposed to register such births within a few days. As a matter of fact they don't do it and the Health Officer keeps a number of officers under him whom he sends round to any spot where births have taken place and they bring back the registrations and then they are

entered. The Health Officer believes that he gets 90 per cent. of the births correctly registered in the Birth Register. He checks them afterwards when the babies die by writing the number of registration certificate on the baby's certificate. Thus he finds only ten per cent. have been unregistered.

Q. Why don't the parents themselves go to register the births? Would it not be possible to make them go?

A. I have thought so. The Health Officer also never proceeds against the parent who has failed to do this. But the first hand information about it can be had from Dr. Sandilands.

Q. Even for the 10 per cent. so left unregistered, have you any suggestions to make to improve this method of registration?

A. I should think the way to improve it to be by insisting upon having the registration done by the parents. I should think that if the Municipality were to proceed against a few, very soon the people would begin to do it themselves.

Q. Do you think the schools can in any way help in demanding birth certificates?

A. I believe that is done in Singapore. I was there last spring and they told me that they had a very good birth registration. There practically all the babies are registered within 36 hours of birth and it is done by the parents. The Schools in Singapore also require the birth certificate before they admit the children into the school and the people are very keen about education and birth registration and therefore take care in order that there may be no difficulty afterwards.

Q. In Singapore did you notice the names in the register because we find difficulty in identifying the child?

A. I don't think the names are given because it is done at a very late stage, but the registration is made within 36 hours. I think the name and place of residence of the parent must have been given.

Q. Who grants the certificate in Singapore?

A. I think it is the Government, but I could perhaps find that out and I think I have some of the papers they gave me about this birth registration. So I will look for them and send you the information.

Mrs. Nehru: Is your experience confined to Bombay alone?

A. No; I had 20 years of work in the Punjab.

Q. So you have lived most of the part in the Punjab.

A. Yes.

Q. Do you know anything about the condition of coolies in Bombay? Do you know what is the marriageable age amongst the coolies here.

A. I think the marriageable age is about the same as amongst our women. I have made a good many observations about these cooly women who are working in the mills. I am watching their childbirth in the Wadia Hospital and I have not noticed that there is much difference. I have seen girls of fourteen having their first baby.

Q. How many girl mothers of 14 do you know of?

A. There are not many but otherwise of the ages of 16, 18 and 20.

Q. Do a large number of women come for confinement to hospitals?

A. No; Very few. Formerly, practically none came. Now, Sir Ness Wadia has built a large maternity hospital at Parel, and a certain number come there but their number is not very great considering the number of cooly women. I think there are about 20,000 cooly women in Bombay and I believe about 10 per cent. are supposed to give birth to children and nothing like that come to hospital. They very often go to their villages and they very often deliver in the chawls with the help of Dais.

Q. Have you been able to fix any particular reason for the very high infant mortality in Bombay?

A. I think it is due to the disease of mothers during pregnancy. There is a great deal of disease amongst mothers.

Q. Are diseases amongst mothers more in Bombay than in the Punjab where you have worked for 20 years?

A. Well: It is difficult to say. When I was in the Punjab I was not specially looking into that question. I should think that it is probably the same. In India there is a great deal of disease during pregnancy. Two years ago I sent out a questionnaire to a number of hospitals in different parts of India—maternity hospitals—and on the information I got from these hospitals I found that there was a very high mortality and it was due to disease during pregnancy.

Q. Is it because of the want of care and want of sufficient food or anything inherent amongst women?

A. It is partly I think of the deficiency of diet and partly of causes which we have not yet discovered. That is the very thing which I am trying to find out in Bombay. We have this disease of anæmia which is one of the chief causes of maternal mortality and a great many mothers who died of anæmia have feeble children and not only feeble but premature children and there seems to be some connection between anæmia and birth and these premature children one suspects die soon after they leave hospital and I am trying to follow that up and search the history of these premature children after they leave hospital; and if I can do that, that will be some information as to the causes which lead to this weakness of the infants.

Q. How many years has this Infant Welfare Society been working here in Bombay?

A. I think it was in about 1911 that Lady Willingdon first started the homes and they have been working for the last 17 years. But of course it was very much developed later in or about 1920 when Lady Lloyd started the Bombay Infant Welfare Society.

Q. Have you noticed any difference in the infant mortality after these organizations and Infant Welfare Societies have been started?

A. There has been a diminution of the infant mortality in Bombay. At one time, about 7 or 8 years ago it was over 600 per thousand and I think the last return of the Health Officer shows it is a little over 300; but of course we have to remember that one wants to take the returns for a great number of years before we can judge whether it is correct, because there have been epidemics, and different climates, and effects of climate and so on, affect the mortality. Of course statistics go down. It would only be fair to compare 10 years say from 1918 to 1928 before we come to conclusions of any sort.

Q. Whatever difference there has been, would you put it down to the Infant Welfare Work?

A. Partly to the Infant Welfare Work. Of course the Corporation also is doing this work. I think the work done by the Corporation Nurses and the Infant Welfare Works is certainly good.

Q. In your experience have you found that the later children of young mothers are more developed and healthier than the first?

A. I could not say that. I have not been living enough in Bombay to say that; and as regards Punjab I can only give my own impressions. I have seen quite fine healthy babies born to young mothers.

Q. Are the later children healthier than the first children?

A. That I could not say. That will be found out by a long course watching women who have repeated pregnancies.

Q. There has been a great complaint that no one comes forward to report the cases of young mothers. If this duty of reporting is given to medical practitioners, will they care to do it?

A. Medical practitioners don't like doing that because it is looked upon as a betrayal of professional confidence.



Q. If it is laid on them to report as a duty?

A. It is a duty to do it.

Q. Will it interfere with their popularity and practice?

A. It would I think to some extent, because a young mother who is going to have a baby would probably call a doctor whom she would trust not to report the act.

Mr. Mitra: Do you think that there is anything in the notion that girls in India attain puberty earlier than girls in Europe?

A. No; I don't think so. I thought so when I first came to India but after being in India for some time I found that the age was practically the same.

Q. Does it differ in different classes of different occupations?

A. I think girls are said to develop more quickly after puberty but I think the age of puberty is about the same.

Q. What do you think to be the ideal age for marriage in India?

A. I think it ought not to take place before 16 and the first childbirth might not be before 17. Of course I am speaking on medical grounds. In the paper I have written I have explained that, but I find babies born of mothers of 16 or under are less satisfactory than babies born of mothers of 17 and over and for this reason I fix it, to my mind, to 16 as the lowest and 17 to give birth to a child.

Q. Is your experience confined to the City of Bombay or even in mofussil hospitals?

A. In a general way, of course, I am speaking from what I have seen in other places too. But as regards the special facts, what I have given in that paper are from the Bombay Hospitals.

Mr. Yakub: We find that 50 or 40 years ago even women were married earlier and they became mothers earlier than they are now. Still we find that the last generation of boys and girls was stronger physically than the present generation. Could you give us any reason for that?

A. May I take it you are quite sure that it was so.

Q. In India we find that the present generation is physically more delicate and unhealthy than the last generation. Our fathers and grandfathers were stronger than we are and we are also told that in the last generation marriages took place earlier than they are now. Could you give us any reason for that?

A. Well; Now-a-days partly it is due, to the people taking food which is less nutritious. For instance the people of Bombay are giving up chappati which is wholesome and are taking instead white bread, which I think is a great pity.

Q. You think the adoption of the western food is one of the causes of physical degeneration of India.

A. I don't think it is so to any extent in India. This is a local thing in Bombay that people are taking a great deal to drinking tea and eating bread and of course amongst the women in a city like Bombay, they take less exercise than they used to do in former days because there are now so many labour saving devices. In olden days the women used to draw water from well but now everywhere there are pipes so they have not to go out at all.

Q. Do you mean to say that because facilities are offered by western civilization, it is to a certain extent responsible for the degeneration?

A. Provided they do not also adopt the good points of western civilization. If these women instead of sitting in the room and taking water from the tap, have their game and take exercise as is done by the western women and also go out and take fresh air then in that case they will be very healthy. Whereas they don't do it. I think this is certainly an important factor. I think there is much more disease during pregnancy in

India than in Western countries. In Western countries, you don't get the disease anæmia or osteomalacia or anything of that sort during pregnancy. You don't get these diseases in western countries.

Q. Is it or is it not a fact that Indian ladies who get western education are more delicate in health than the uneducated girls?

A. No; I don't think so. At least with my experience I have had in making this investigation, I can say that there is a much less disease amongst the Indian Christian women who have education and who take fresh air and exercise and that the next class is the Hindu women in Bombay who have a certain amount of fresh air and exercise because they do not observe purdah. The Hindu women are more healthier than the Mahomedan women who are kept in purdah.

Q. Is the infant mortality among the muslims in Bombay greater than amongst the Hindus and others?

A. I could not say that. You will find facts given in the Health Officer's report.

Q. Is the death rate in Hospitals from childbirth greater amongst Mahomedans?

A. Yes: It is greater and I think it is due to the purdah system, lack of air and lack of exercise.

Q. Is it not a fact that Mahomedan girls are generally married at an advanced age than the Hindu girls?

A. I found a very little difference. There was a slight difference but very slight.

Q. At what age usually Mahomedan girls become mothers?

A. Very much the same age as the Hindu girls.

Q. What is the average age?

A. The average age is 20·7. Of course the figures are so high because there are a large number who have their first childbirth at 25 or 26.

Q. Have you found that educated Indian girls can bear the pains of labour more easily than uneducated girls?

A. I don't think it is a question of education that has taught them to take fresh air and exercise and to take care of their health and to take medicines whenever they get ill.

Mr. Bhargava: Amongst Indians do the girls of the labouring classes get puberty earlier?

A. I do not think so; I have no knowledge because I have not made a special study of the subject.

Q. You have stated that in young mothers also their progeny was not weak sometimes. May I know what the ages of these mothers generally were?

A. Very often they were about 15.

Q. Did you notice that in the later births of children they were prone to disease?

A. No; I have not noticed any difference.

Q. So that in the Punjab there was not much difference in the health of the girls or the progeny whether the girl was married early or late?

A. I cannot say that. When I was in the Punjab I was doing general work and I did not make careful observations about these maternity cases.

Q. Where were you working in the Punjab?

A. I was working in different places. I was working for 10 years in the Patiala State.

Q. When you said that birth registration in the Punjab is unsatisfactory, were you referring to the Patiala State?

A. It is the same all over the Punjab. I was in the Punjab as far as back as 1913. Things may have changed now.

Q. When were you in the Patiala State?

A. Between 1903 and 1913.

Q. And before that?

A. In some of the districts of the Punjab. I was in the Nankanda State for some time and for 3 years I was in Ludhiana.

Q. Is birth registration defective in the Ludhiana city?

A. Yes.

Mr. Kadri: Is there a Municipality at Singapore?

A. Yes.

Q. You said that the schools insist on the birth certificates of boys being produced before they can be admitted. Do you think this system can be introduced in India also?

A. I think it should be. You will then make people realise the importance of registering births.

Q. It has been suggested that we might have a system of registration of marriages so that we might have documentary evidence about the ages of the people who marry. Do you approve of that suggestion?

A. That would be a good thing.

Q. On whom would you lay the duty of maintaining these registers?

A. I suppose the Municipality.

Q. On whom would you place the obligation of reporting the marriages?

A. I think you can place it on the parents when the girl is under a certain age and above that age the parties who contract the marriage.

Mr. Kanhaiya Lal: Are you in favour of fixing 16 as the age for marriage?

A. Yes; but you must remember that I am speaking from the medical point of view. I know there would be difficulties from other points of view.

Q. What are the other points of view?

A. I was thinking of the girls who are living in slums who belong to poor families. If you are going to fix the marriage as high as 16, what are you going to do with them?

Q. Among the better classes the girls will be having education. Among the labouring classes in the rural areas they will be working in the fields, and in the cities they will be working in the mills; and you will have occupation for these girls till they are 16.

A. If they have occupation then I think it would be excellent.

Q. Do you think that a girl under 16 is not fit for consummation or childbirth?

A. Many girls under 16 have consummation of marriage and have healthy children and they do not seem to suffer. But there is also the fact that a large number do suffer. Therefore we have to provide for the safety of the many. If the girls could wait it would be better for them.

Q. Supposing we had no legislation fixing the age of marriage what age would you recommend for consummation. In these cases would you recommend the postponement of the marriage till a certain age, and if so what should that age be?

A. I would still recommend 16 for the age of consummation from the medical point of view. But from the practical point of view it may be extremely difficult.

Q. What difficulty do you anticipate in enforcing the law?

A. If marriages are allowed at 13 and 14 I think it will be difficult to prevent a girl from going to her husband for about 2 years. People do believe that at 14 a girl is fit for consummation. Therefore unless public opinion is changed, it will be very difficult to carry out this law.

Q. Do you think that public opinion should be brought into line before any legislation can be advocated?

A. Yes; it is a matter of the greatest importance. And if you can secure the co-operation of all women organisations and women and child welfare centres, it would make a great difference.

Q. Even as it is the age of marriage is gradually advancing and marriages do not generally take place before 16 or 17 except amongst a very small portion of the population. Do you think so?

A. I believe it is so.

Q. Public opinion has made such strides that there will be no difficulty in fixing the Age of Consent at 16. May I take that to be right?

A. I do not think that I have really sufficient knowledge on the subject.

Q. You have stated in your statement that out of 1,112 cases there were only 16 mothers of 14, 24 of 15 and 94 of 16 years of age so that it is a very small number out of the aggregate of 1,112. In view of this would you not provide for legislation and make people conform to the age recommended so that we may provide for the general welfare of the population?

A. I have been told that there are orthodox communities where early marriages take place, much earlier than in the case of the women who come to these hospitals. I understand that child marriages are prevalent amongst some Rajahs.

Q. Leaving alone the Rajahs, do you know amongst what communities in British India child marriages take place before 16?

A. In certain orthodox communities, I understand that there is early consummation, but maternity cases amongst them are not taken to the hospitals. It was Miss Sorabji of Calcutta who told me this.

Q. Suppose we adopt your recommendation and fix 16 as the Age of Consent in marital cases, would medical opinion help us in bringing cases of infringement of the law to light?

A. It is a very difficult for doctors to decide on. Doctors are not policemen and they would not like to bring to the notice of the police the facts which they have come to know when attending to cases in private families or even in the hospitals.

Q. Would they make any confidential report just as they now do in the case of poisoning?

A. If there were a law to that effect, they would have to.

Q. Even supposing there is no law, would they send a confidential report?

A. I cannot say that.

*Figures furnished by Dr. Balfour, for anæmia in women under 20.*

Of 150 cases of anæmia of pregnancy watched during 1925-26—

13.6 per cent. were under 20 years of age.

61.2 per cent. were between 20 and 30 years of age.

22.6 per cent. were between 30 and 40 years of age.

2.6 per cent. were over 40 years of age.

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Written Statement, dated the 28th August 1928, of Mr. KANJI DWARKADAS, Bombay.

1. There is very great dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. This dissatisfaction can be seen in the speeches of the Indian Members of Legislative Assembly when the Bill was discussed in 1925. Even

in 1891 there was a large section of the public who strongly felt that the age of 12 was too low.

2. There are no circumstances whatsoever which justify retaining the law of the Age of Consent as it is, and there is every reason from all points of view to make an advance on the present law; for India is bound to suffer physically, intellectually and morally if the law is not amended.

The amendment of 1925 raising the Age of Consent from 12 to 14 was only playing with reform, and Government as shown by the speech of the British Home Member were not anxious to deal seriously with the problem. It was not expected therefore that the 1925 amendment raising the age to 14 would succeed in preventing cases of rape outside the marital case, or the improper seduction of girls for immoral purposes.

To make the law effective the Age of Consent should be raised to at least 18 for non-marital cases. That by itself would not be enough: for so long as the system of brothels is allowed to go unchecked by the foreign British Government in India, their existence serves as a direct incentive to traffic in women and girls, and leads to seduction, rape, kidnapping and other similar offences. Indian public opinion has expressed itself strongly—in Bombay for example—but Government have so far not responded to public opinion.

It would not be enough merely to raise the Age of Consent for non-marital cases to 18: not only should the Age of Consent for married girls be raised to 16 or 17, but child-marriages under that age should be forbidden by law.

4. Raising the Age of Consent within the marital state from 12 to 13 was hardly expected to show any appreciable improvement. Public opinion is already stimulated in the direction of further reform, and the only obstacle in the way is the obstinacy of the foreign Government, who under plea of neutrality on "religious" questions refuse not only to guide, but to move with public opinion.

5. So far as I know, girls have their first monthly sickness when they are about 13. This does not generally differ in different cases, communities or classes of society, though certainly it depends sometimes on the surroundings and upbringing of girls.

6. Co-habitation is common soon after puberty. These cases hardly ever come to court.

7. The opponents of reform—the orthodox and the conservative—try to scare away reformers by bringing forward the bogey of "religious" injunction. The main objection of anti-diluvian "yesterday" of the orthodox party against reform is supposed to be based on religious grounds. Speaking on "Child-Marriage and its Results" in 1913 ("Wake Up, India"), Dr. Besant rightly urged that "where any supposed sacred writing comes in conflict with the law of God as written in Nature itself, then the writing must give way to the natural law and the voice of God in Nature must be followed rather than the assumption of that voice in writing obviously subject to interpolations, to forgery, and to the other changes that all writings go through in the course of ages". This argument, I submit, is enough for all reasonable and right-minded people anxious to make all reforms in the light of experience and the needs of the age in which we are living even if there was any basis of truth in the objection based on religion. But even from the point of view of religion, the orthodox party is entirely wrong. Let me refer them "to the times of our greatest literature, the time from which the Upanishads came down, the times when the great Darshanas were thought out, the times, later, of splendid historical writings, of Epic poetry, and still later of drama" (Dr. Besant). Women then were the equals of men, trained and cultured and educated to the highest point.

So far as I know, no penalty is prescribed for non-consummation of marriage before or after puberty: except the penalty prescribed by an

ignorant and corrupt priest craft to impose upon the superstitions the ignorant and the foolish.

9. It is a mistake to assume that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Generally for at least 2 years after her first monthly sickness, a girl is not strong enough to stand the strain—physical and emotional of sexual intercourse. Even then I am afraid that would mean—though not always perceptible—injury to her own health and that of her progeny—and what is equally bad, the mind stops developing by such early consummation. The strain on the emotions also often results in nervous breakdown.

10. A girl in India would not be competent to give an intelligent consent to co-habitation with a due realisation of consequences till she is 17 years of age. On questions like this, I can speak with much greater knowledge and therefore authority than old pillars of orthodoxy, whose arrogant claim for, being the true preservers of old traditions is based on pride, prejudice, and privilege, or heads of religious sects, whose ignorance and whose superstitious beliefs one would ignore and laugh at, but for the tragic results they entail. They are not in touch with and therefore know nothing about the feelings of the younger generation. They are out of touch with all the modern conceptions of life, and they do not realise the injury they are inflicting on humanity in general and India in particular by obstinately clinging to old traditions, just because they are old traditions.

11—12. I have come across some cases in which co-habitation before puberty or after puberty but before full physical development of a girl, has resulted in injury to her health or body and also prejudicially affected her progeny.

In several cases, the girls have suffered terribly immediately after meeting their husbands, because their bodies were roughly handled before they were fit enough to stand such roughness.

In other cases, girls have suffered from general weakness, ending in T. B. or anæmia and slow and painful death.

In some cases, weakness follows the birth of a child or children, and the poor girl-mother, who might have otherwise developed into a healthy, cheerful woman, becomes prematurely old, drained of the last ounce of strength, and it would be something to be thankful for, if instead of dragging her unhappy life for a number of years, she dies early.

I have also come across several cases of this description, where the injury to the girls is V. D. this refers to unmarried girls or girls who are seduced and forced to live a life of prostitution; the extent of this evil could be reduced by making brothels illegal.

So the first evil is seen in the heavy death-rate of the immature girl-mothers. No woman is physiologically fit to bear a child until the organs of motherhood have reached maturity and they do not reach it until the girl has completed 17 years.

This brings me to the second evil effect of early marriages—infantile death-rate. The death-rate in Bombay in 1924 was 411, i.e., out of every 1,000 children born, 411—more than 40 per cent.—died within their very first year. This is but natural, considering that the children of weak and immature mothers cannot but have a low vitality and they cannot withstand disease, with the result that they die in hundreds. The girl-mothers cannot fulfil the onerous responsibilities of motherhood, and so to the low vitality is added the ignorance of the unfortunate mother, which helps the mortality rate to go up so high. I have come across many cases of this nature.

I am also of opinion that early consummation of marriage and early maternity are responsible for affecting not merely the physical progress of the people but also its intellectual and moral progress. Because an ignorant girl-mother, not understanding the laws of hygiene and health cannot bring up healthy and strong children—nor is she in a position to create any good impressions on the easily impressionable minds of her

children. This is apart from the fact that children of physically and mentally immature girl-mothers cannot be physically and mentally strong.

13. There has been further development of public opinion in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925. It is general and not confined to certain classes only. I should further point out that there is a feeling—not without justification—of despair, that nothing can be expected from the present Government, which is not only unsympathetic, but disregarding or out of touch with all the best elements of the country.

14. Women do not favour early consummation of marriage for their children.

15. I understand difficulties have been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code. A proper system of registration of births would minimise these difficulties.

16. Also the difficulty or margin of error in determining the age would be reduced or minimised if the Age of Consent is raised to 16 years.

17. Under the existing conditions, I am afraid it would be necessary to separate extra-marital and marital offences into different offences. I strongly recommend that whipping should be one of the forms of punishment in such cases, in addition the present penalties. From my experience I can say that more than fine and imprisonment, whipping is the one punishment which serves as a deterrent in sexual offences of this and other natures.

18. I suggest that the trials for offences within and without the marital state should be held in camera, and the names of the victims should not be disclosed; just as in blackmail cases in England, the victim's name is not disclosed. If this safeguard is not introduced, there would be difficulties in bringing such cases to court, because of the permanent harm done to the unfortunate victims.

20. It would be necessary both to have penal legislation fixing higher Age of Consent as well as legislation fixing the minimum age of marriage. In Bombay, public opinion would back both of these provisions.

21. It would not do merely to rely on the progress of social reform by means of education and social propaganda to secure the object in view. These must be backed by legislation, for such legislation in itself is a form of propaganda. As Dicey says "law fosters and creates law-making opinion...A principle derives prestige by mere recognition by Parliament... The true importance of law lies far less in the direct result than in their effect upon the sentiment or convictions of the public".

## Oral Evidence of Mr. KANJI DWARKADAS, Bombay.

(Bombay, 24th October 1928.)

*Chairman:* How long has the Bombay Vigilance Association, of which you are Honorary Secretary been in existence?

A. Since 1923.

Q. What are the functions of the Association?

A. Firstly, to create public opinion with regard to the fact that the moral law is one and the same both for men and women; Secondly, to agitate for the abolition by law of brothels in the city and to take steps against indecency in theatres and cinemas, and in the films and in the stage.

Q. What do you mean by the moral law being equal?

A. The public in certain things are prone to be more lenient towards men than in the case of women even though offences of the same nature are committed. This is otherwise called the double standard of morality.

Q. Has your association dealt with this particular question of child marriages?

A. As I have said in para. 3 of my memorandum it is really the brothels that are responsible for a good deal of seduction and rape cases and to abolish these brothels is one of the main objects of our Association.

Q. That is your special function. But have you in any way carried on propaganda work in connection with the age of marriage?

A. We have not directly dealt with that question.

Q. What is the membership of your Association?

A. It consists of 40 associations in the city *plus* about 150 individual members. Our Committee consists of 12 members elected by the general body and one member each elected by the 40 different associations.

Q. What is the total membership of your Association?

A. That would go to thousands.

Q. Has your Association done any propaganda work in connection with this particular question?

A. Not except in a general way. But we have raised a hue and cry with regard to the age of consent in non-marital cases and suggested that it should be 21.

Q. Have you done any propaganda work in connection with the raising of the Age of Consent?

A. It does not directly come under our work.

Q. Do you think that there is any responsibility in these matters on the people apart from the Government to have social propaganda of this kind?

A. I think that there is responsibility laid on the people. People do realise that there is responsibility. But they know that the foreign Government is unsympathetic and does deliberately neglect the interests of the country and its children and women. It is a matter of utmost despair to us that nothing can be done in those circumstances.

Q. What is the age which you would have for penalising marriages?

A. 16 or 17 as a compromise.

Q. And for boys?

A. 21.

Q. You are for legislation both for fixing the age of marriage and the age of consent

A. Yes.

Q. What age would you fix in non-marital cases?

A. 18. I am suggesting it only as a compromise, though I would personally have a much higher age.

Q. In view of what are you compromising?

A. In view of the present conditions of the country.

Q. What are the present conditions?

A. The general belief is that girls of 16 to 18 years of age are fit for marriage and child birth.

Q. That can hardly be a compromise.

A. It is a compromise in the sense that my own personal opinion is that the age should not be less than 23.

Q. Is it on medical or other grounds?

A. Not medical but other grounds.

Q. Is it on prudential motives?

A. Yes.



Q. You suggest whipping as a punishment. Are you serious in what you suggest?

A. I am very serious about it.

Q. In the case of a boy of 16 or 17 who under the evils of the present day custom is married to a girl of 13 or 14 going to his wife and committing the offence would you like to give the boy whipping as punishment?

A. I would like the father of the girl or the boy to be whipped. I suggest that whipping should be the punishment but not for the boy or girl. I am quite serious about it, because I think that in all sexual offences whipping will help.

Q. Have you reason to think that the age of consent as it is at present at 13 has very often been broken?

A. I think it is broken.

Q. Is it broken even in the Bhatia community? Is there consummation in your community before 13?

A. In some cases yes.

Q. Why are the cases not brought to light?

A. Because of the injury it will cause the girl and the permanent injury it will cause the family.

Q. Would you advocate whipping still?

A. Yes; I think it will serve the interests of the country.

Q. Can you tell us if you happen to know the several reasons which contribute to infant mortality in Bombay?

A. Yes, the first is the early age of the mother; secondly, want of legislation for the protection of factory workers before and after child birth. I will give you an instance. Some years ago a woman was brought to the Wadia Maternity Hospital at 6 o'clock in the morning for delivery. The child had to be killed because of the complications. The mother was almost dead but she was saved. The woman had to work in the factory till 6 o'clock the previous evening. She was saved because she was brought to the Hospital in time. I therefore say that want of proper legislation about maternity benefits is one of the causes of infant mortality. Thirdly, venereal disease, fourthly, too many children and lastly, want of proper education and proper knowledge on the part of the girls for looking after the children due to their early age and want of knowledge about rearing babies.

Q. Supposing a girl had become a mother at 13 or 14 and these conditions which you have mentioned do not exist or are absent, do you know any cases where even then the girl mother has suffered?

A. I know of a young girl of about 14 belonging to the Bhatia community who died of child birth. In Bombay, I know of a Gujarati family of about 10 or 15 cousins every one of whom has got a second wife. All the first wives died in their first child birth.

Q. Do you mean to say that they were widowers marrying young girls?

A. No; the men were about 25, and the wives were 14 or 15.

Q. Had they knowledge of child rearing?

A. No. You can hardly expect a girl of 13 or 14 to know anything about child rearing. Physically the girl is too weak to be a mother.

Q. Opinion on that is not unanymous.

A. But I have seen instances in life. For the last 10 years I have made a special study of the question.

Mrs. O'Brien Beadon: Is the Bhatia community a wealthy or poor community?

A. It is considered to be a wealthy community.

Q. You say you know of girls of 14 who have given birth to a child and died immediately after. How many such cases have you come across in the last two years?

A. I cannot say that offhand.

Q. Is your Association the same Association which published a long article about the Devadasis in the newspapers?

A. Yes.

Mrs. Brij Lal Nehru: You say that several bodies are represented in your Association. Are the objects of all these institutions the same as those of your Association?

A. No; they are all of them doing some sort of social work in their own way, and in this particular matter in which we are interested they co-operate with us.

Q. What are the practical methods by which you achieve your object?

A. We have got a worker and she has got assistants who go about and visit the brothels regularly, and when any of the prostitutes are in need of help they help them. They also reclaim prostitutes and do rescue work.

Q. Have you been able to save a good number of women?

A. Last year in the city itself we saved about 60 girls under 16.

Q. Are you in touch with the Swami Shraddhananda's Rescue Home?

A. Yes; such girls as we have been able to rescue we send to the Ashram if necesasry. The Home is also represented on our Committee.

Q. Do they take girls directly from the brothels to the Ashram?

A. Yes; they do.

Q. You say that you would advocate whipping as a punishment to further the interests of the country. Are you aware that the whole of the civilised work is against whipping?

A. I am definitely opposed to whipping except in the case of sexual offences.

Q. Do you think it will serve the purpose?

A. I think so.

Q. You want it in addition to the present penalties. Do you think that the present penalties are not sufficient?

A. The rich people will not be afraid of heavy penalties. I do not at the same time suggest that whipping in all cases should be the punishment. I suggest it only as a deterrent punishment which the presiding Magistrate can award if in his discretion he thinks it is necessary.

Q. At present the punishment for offences under 12 is 10 years' rigorous imprisonment. Don't you think that it is sufficiently deterrent?

A. I think whipping will be more deterrent.

Q. The present law has been in existence for years. Why have not social reform bodies taken advantage of it and vigilance associations investigated into such cases and brought them to light?

A. The other day I read about Sir Purushottamdas's suggestion about women organisations taking up work of this kind, work like that of the S. P. C. A. for instance. A sort of organisation might be started with the prevention of cruelty to young girls for its object.

Q. Should not this have been part of the programme of the work of the social reform associations which already exist?

A. It is a very interesting suggestion which I hope these Associations will take up. I cannot say anything about the past. I think in future these associations should take up this work.

Q. Do you think in this work they will have the sympathy and support of the general public?

A. I think so.

Q. To facilitate their work do you not think that the punishment should be lightened? Do you not think that your association will not be able to bring such cases to light unless the punishment is lightened?

A. Not necessarily.

Q. Such cases may happen in respectable families; and do you think people will agree to have the husband of the girl sent to jail or publicly whipped?

A. This is a question on which one has got to judge for oneself and other people's opinions do not count.

Q. Why are the seduction cases very much in numbers in Bombay?

A. It is because of the existence of the brothels.

Q. Have you followed any of these cases; how a girl was seduced, etc.?

A. I have tried to keep in touch with such cases. Our vigilance worker does follow it up, and the recent Children's Protection Act makes it impossible for girls under 16 to live in brothels. Such girls are traced and removed from brothels.

Q. Can you say whether such cases are greater in the city of Bombay compared to any other town in the Presidency?

A. They are as bad as anywhere else.

Q. Do the women belonging to these brothels, come from outside Bombay?

A. They come from all over India. In Bombay out of eight or nine thousand prostitutes, most of them are non-Bombay girls, coming from Satara, Kashmir, Bengal and other places.

Q. From Kashmir, are they Hindus or Muhammadans?

A. Both Hindus and Muhammadans.

Q. Amongst these prostitutes, is the number of Muhammadans greater than that of the Hindus?

A. They are mixed up together. There is no water-tight compartment. I shall look up and send you figures about the numbers.

Mr. S. C. Mitra: What age would you fix for the marriage of girls?

A. 16.

Q. In marital cases would you confine the punishment to fine only or would you have imprisonment also?

A. I should like to have punishment even stronger than imprisonment. I would like to have whipping also.

Q. What is your objective in having whipping as a punishment?

A. I put forward that suggestion seriously. In fact it is the opinion of Mr. Griffiths, the Inspector General of Police, who told me that whipping is the one thing these people understand.

Q. Are you aware that there is a propaganda for abolishing this punishment altogether. Do you know the reasons why the punishment is objected to?

A. On humanitarian considerations based on the principle that no one has any right to hurt another. I personally think there should be no capital punishment; but in this particular case I make an exception.

Q. Are there not worse evils like murder?

A. In my opinion sexual crime is one of the worst.

Q. Do you want both consummation law and marriage law?

A. Yes; but if you fix the age of marriage at 16, then age of consent within marital relations is not necessary.

Q. Supposing we cannot have a marriage law, would you advocate a consent law?

A. I think that unless you have got a marriage law consent law will not work. People may marry girls with the best of intentions; but once the girl is married it is difficult to prevent consummation before the prescribed age.

Q. Is it not logical then that there should be a marriage law, and no consent law?

A. Yes.

Q. As regards registration of births, have you got any experience about the villages?

A. No.

Q. Do you think that in Bombay it is properly kept?

A. Yes.

Q. You referred to religious injunctions. Is it about consummation of marriage?

A. Amongst certain people there is a superstition that a girl should be married before she attains puberty. That is an absurd superstition. I think that if there is any religion which says so it should be scrapped.

Q. In fact from your experience do you think that girls are not generally married before 13?

A. Not now.

Q. Naturally I take it these superstitions have very little effect.

A. They are dying slowly, but not as fast as they should.

Q. Do you think if we pass a legislation there will be hue and cry?

A. No; I do not think. If there is a law, mothers will then say that there is a law to that effect and the law will have to be obeyed. I have found from personal experience that the orthodox people give trouble only so long as you yield to them; but once you show fight, they are kind and affectionate. It is because there is no substance in their opposition.

Q. Is that your experience in the Bhatia community?

A. Yes; we have broken our caste. The orthodox people in our community kicked up a row because some people in our community do not observe distinctions at dinners and some of them went to England. We seceded from the caste and the Bhatia community is broken to pieces.

*Maulvi Mohammad Yakub:* Is it not a fact that the public is now in favour of raising the age of marriage?

A. It has been very much strengthened recently.

Q. So may I take it that marriages do not generally take place before 14?

A. No; they do not.

Q. If that is so why should you rise the Age of Consent in marital relations to 16? Do you not think that public opinion is itself strengthening in this direction, and that legislation interfering with the domestic relations of the people is not good?

A. I think legislation would strengthen public opinion. In my opinion legislation should always go in advance of public opinion. According to Mr. Dicey mere recognition by Parliament gives prestige to a thing.

Q. Is it not a fact that people do not want legislation to interfere in their domestic affairs?

A. That was the opinion which ought to have been held 30 years ago. But now-a-days the state interferes with every action of ours.

Q. Do you approve of the interference of the state in the domestic life of the people of the country?

A. Yes. The only difficulty is that the Government is foreign.

Q. Then do you not want interference from a foreign Government?

A. I would have interference, but I want the Government to play the game.

Q. You have said that frequency of giving birth to children is one of the causes of infant mortality. Can you suggest any measures to stop frequency of birth of children?

A. Yes, artificial birth control.

Q. What measures would you suggest?

A. They should not have too many children; there should be contraception.

Q. Would you also suggest any legislation in this direction?

A. No, it is too much to expect but I would suggest that municipality should give free information and instructions with regard to it.

Q. What are usually the ages of the girls who go to brothels?

A. The ages of the girls are 16 and above.

Q. If the ages of the girls are above 16 how do you say that rapes and seductions are encouraged by brothels?

A. Because girls are recruited at a very early age so that they are gradually taken into the profession.

Q. But they are not seduced?

A. Yes, they are seduced on their way to brothels.

Q. What is the reason that so many prostitutes from all parts of the country inside and outside India flock to Bombay? Why do they come to Bombay?

A. It is a question of supply and demand.

Q. If it were so they would have gone to other places also to create the demand?

A. Bombay is a sea port and sea port attracts them.

Q. Don't you think it is due to luxurious life and extra wealthy life of the people of Bombay?

A. It is not that. It is due to the strain of city life due to housing system. All workmen come here and bring their families. Also because it is a sea port and sailors come here. There is an organised system of commercial vice where men or women run a business of half a dozen girls who make them work for more than 15 to 20 visitors a day.

Q. You know that cases of rape within marital relations very seldom come to court?

A. Naturally.

Q. What is the reason for that?

A. Because of the permanent harm it causes to the girl and the family.

Q. Would you approve of the idea of appointing some societies, like your society, to be given power to make complaints in such cases?

A. I personally think it is a very very interesting suggestion. It could be developed with proper discussion but how far, it is not possible for me to say now but it should be considered by the society.

Q. Would you like this power of complaint being given to vigilance societies? Will cases of this kind come to light and accused brought to book?

A. I suppose it might be so arranged that the names of victims should not be published. I would give you a personal example. If I had a daughter who is 13 and if some mischief maker does injury to her I would not ordinarily go to court and say that such and such a thing has happened but if I knew that the girl's name will not come out and there will be no trouble for me in the future I would go to court.

Q. Would you suggest that such trials should be in camera?

A. Yes.

Q. Would you make this offence cognisable or non-cognisable?

A. I would make it cognisable.

Q. Would you make it compoundable?

A. No.

Q. Would you make it compoundable with the permission of the court?

A. I would not.

Q. What safeguards would you suggest for protecting the girls who are working in the factories?

A. Proper administration of the Factory Act; creation of the proper factory inspection department with women inspectors. In Bombay Presidency we have got one woman inspector and she is supposed to look after all the factories. We could have a bigger staff.

Q. Do you not want any amendment in the legislation which already exists? Do you think it is quite sufficient?

A. To some extent it is quite sufficient.

Q. It is not carried out?

A. Government have no intention to carry it out.

Q. What measures would you suggest?

A. A big number of women inspectors should be appointed who would periodically examine factories and go into the conditions and difficulties of the women workers, their proper seating accommodation and proper arrangement for their food.

Q. Is the infant mortality greater in women working in factories than in other women?

A. Among the women working in factories the infant mortality is 80 per cent. Out of 100 children born 80 die within the first year.

Q. Irrespective of the ages of the mothers?

A. Yes. In Bombay there are 30,000 women factory workers between the ages of 18 and 44 and they are considered to be of child bearing ages. The Government appointed a lady doctor in 1921 and she worked out the figures and Government started some enquiries. I am quoting from the Government blue book when I say that 80 out of 100 children born in the mill area die in the first year.

Mrs. Nehru: Since then have not some creches been started?

A. To some extent but these had not much effect. The book from which I have quoted is one of the labour office publication of 1922.

Chairman: I understand from you that Government was directly opposed?

A. The lady doctor said that this infant mortality was due to the fact that 98 per cent. of the children born in this area are drugged with opium. Government have that report as I have and we could imagine how good the Government could be if they sit tight on the report for the last 7 years. It is a brilliant record of which any Government should be ashamed. After the report of the lady doctor was published the Government went to sleep.

Maulvi Mohammad Yakub: This enquiry was made by a lady doctor appointed by Government?

A. Yes.

Q. If this is the case either the raising of the Age of Consent or the age of marriage would not help these poor girls working in these factories.

A. Girls working in these factories are between 18 to 44.

Q. Is there any special age for girls for working in the factories?

A. There is a special age for boys and girls under 18.

Mr. Bhargava: In 1921 you say there was this report of the lady doctor. Was any question put in the Legislative Council subsequent to this?

A. Yes. The Government replied that they are considering. They put it off again that it is a central subject. One of the easiest thing with the Central Government is to say that a subject pertains to the Provincial Government and the Provincial Government to say that it is a central subject.

Q. So far as 80 per cent. mortality is concerned it is true of women between 18 and 44. So it has nothing to do with the Age of Consent?

A. No.

Q. Have you got any faith in the police of this Government?

A. I have nothing to quarrel with the police. For the last 7 years I can speak that we have one of the finest Police Commissioners. He has himself detected some cases of crime.

Q. I am asking about the police in general?

A. So long as man is man there will be trouble. So far as Bombay police is concerned I have confidence in it.

Q. Have you no experience of the police outside Bombay?

A. No. If there is no confidence, the remedy would be that there should be a strong non-official organisation to co-operate with the police in such matters.

Q. There is an alternative which has been suggested by several witnesses that this offence should be made non-cognisable and complaint should be brought to the court direct and it should be dealt with just as the courts deal with ordinary complaints.

A. It will be very difficult.

Q. Supposing it is arranged in this way that the reporting work is done by other agencies such as vigilance societies in towns and in the mofussil by Lumbardars, watchmen or patels?

A. I say we shall prefer the police if police comes under our legislature.

Q. Police is not going to be a transferred subject. Do you think it is safe to entrust the police with such delicate and domestic matters?

A. Anything will be better than the present conditions. I have more confidence in the police than in the present conditions.

Q. Is it only so far as Bombay is concerned?

A. Yes.

Q. At present, as you know, every person has a right to bring complaints against anybody in regard to marital and non-marital cases. Would you leave it as it is or would you like that only the parents of the girl or the girl herself, or certain societies, as you have suggested, may have the right of complaint?

A. I think everybody should have power to make complaint.

Q. If that is so do you not think there will be a great deal of harassment?

A. If the complaint is wrong the complainant will have to suffer unless he has some reason for believing in making a complaint.

Q. The present safeguards are sufficient in your opinion?

A. Yes, they are enough.

Q. Supposing there is a provision in law that in every case in which there is no police chalan there should be a preliminary enquiry before an accused is summoned, would you prefer that?

A. The case would be postponed and more information would be got. Yes, that is better, but the details of the working of the law are beyond me.

Q. Can you give any reasons why parents marry their children at an early age?

A. It is a very very big question. First of all it is due to ignorance.

Q. Otherwise the parent loves his children most and he would marry them late if he knew it to be in their interest. Is it not?

A. There is also self interest. Apart from all social or political or medical reasons one reason is this. India is progressing very fast. I can speak with personal experience what I see every day. The difference in the younger generation in education and social understanding between the husband and wife is so great that unless some sort of legislation is passed to raise the standard of girls and the age for marriage of girls the whole Indian society will soon be unequal in mental development. Girl on account of early motherhood gets no chance of mental development.

Q. The education of the girl suffers?

A. Yes, there is a big wall being created between the husband and the wife.

Q. Is ignorance the chief reason why parents should be punished?

A. Ignorance and supersition.

Q. Before we educate the masses and tell them that this is the right course, do you think they should be flogged because they are ignorant and superstitious?

A. I think a certain stages of ignorance and superstition enter the realm of wickedness.

Q. Without any criminal intention?

A. Intention does not mean anything. The father has the best of intention of marrying his girls and he spends lacs of rupees. The consequences of their ignorance and supersitions are so disastrous that the remedy should be equally strong.

Q. If there is no bad intention the responsibility for the consequence does not rest with the parents.

A. Intentions do not matter at all. My action may be so bad that it would be better to rock me up than let me go about although I may have no bad intention.

Q. You know that in penal laws intention plays a very important part. If a person kills but it was not his intention to do so he goes scot free. What do you say to that?

A. But the evils are so great that intention or no intention they should be punished.

Q. In Sarda's Marriage Bill, as you know, one month's imprisonment is provided in case of breach of marriage laws or fine. You would not advocate flogging in the case of women?

A. No. As far as flogging is concerned women are always exempted.

Q. Would you resort to flogging in breach of marriage law or Age of Consent law only?

A. Both.

Q. But there is no sexuality in the case of marriage?

A. But the result will be sexuality.

Q. So far as consent laws are concerned I understood you to say that if the boy is of 18 years he should go scot free. Is that so? As you know in schools also there is a certain amount of caning?

A. I am opposed to caning of boys. Up to 18 boys must go scot free and the parents ought to be punished and if the boys are over 18 they should be flogged.

Q. Do you mean to say ordinary flogging which is administered to criminals?

A. I have not thought over the kind of flogging.

Q. Would you adopt the same system which is now in the schools of caning on hands?

A. Something like that. I would like flogging so far as parents are concerned and caning so far as boys are concerned.

Q. Then you suggest that these offences should be classed under a separate Section of the I. P. C.?

A. I am rather weak on this legal question; I do not exactly know.

Q. In raising this Age of Consent to 16 is the main consideration you have in mind that the State should protect the minor children. Is that so?

A. Yes, State and society.

Q. Is there any other consideration in marital cases?

A. The other considerations are the general welfare of the country apart from the welfare of the individual.



*Q.* So far as general interests are concerned I understand that you are in favour of giving some sort of independent choice to the girl for sexual intercourse by a husband also?

*A.* According to ordinary notions she must submit to sexual intercourse.

*Q.* May I understand that you are of the same opinion that after marriage a girl has no right to refuse sexual intercourse?

*A.* She has every right up to any age.

*Q.* So far as brothels are concerned in Bombay you say that the usual age is about 16 and above?

*A.* Because the law does not permit below that.

*Q.* These brothels are generally frequented by young men?

*A.* All sorts of men.

*Q.* I understand that in many cases these girls of 16 or 18 are instrumental in alluring many young men?

*A.* Not alluring. I say you could go and see these girls. They get annas four per visitor, their houses are dirty their health is bad, they do not use new sheets between the two visitors. I do not think you could leave a girl for 8 days and she would escape injury. She is supposed to make Rs. 2 or Rs. 3 a day and at annas 4 you can imagine the number of visitors she gets. Physically they are rotten.

*Q.* Have you come across any cases in which developed girls of 16 or 18 exercise some sort of fascination over young boys?

*A.* If you see Hornby Road in a busy season between 12 and 2 you will find many private prostitutes coming in a car or victoria and attracting attention.

*Q.* You want to raise the age in non-marital cases to 18 and if these girls are exercising some sort of charm over young men don't you think that these charming offenders would go scot free and these men will be punished?

*A.* In such cases the man is the real offender.

*Q.* A girl of 16 or 18 is not the offender?

*A.* She is the victim of poverty. She is asked to go into streets by some people.

*Q.* How would you prevent this poverty?

*A.* I would mend the present Government.

*Q.* As between 16 and 18 so far as girls go there is not much to determine the age?

*A.* I think there is. I think the doctors can say much better than we can.

*Q.* Would you make any difference in the amount and nature punishment if there is mischief with a girl of 16 to 18 and below 16?

*A.* No.

*Mr. Kadri:* Does the society with which you are connected take an interest in reform work in the mofussil?

*A.* If not directly, indirectly.

*Q.* One of the witnesses told us that among Lohanas and Kunby in Kathiwar,utch and Sind marriages take place at very early ages and consummation takes place before puberty. Is that your opinion?

*A.* I tried to find out myself; so far as lower classes are concerned I found out that girls are married at a very early age—at 9 or 10, but they wait till they reach the age of puberty before they meet their husbands.

*Q.* Is there any *Ana* ceremony performed before the girl is sent to the husband?

*A.* It is not general but sometimes it is performed.

*Q.* Among the Bhatias?

*A.* It is performed but not always.

Q. You have said that the offence should be cognizable. Even now the offence is not cognizable above 12. The difficulty is that police can take, if it is cognizable, action upon an unauthorised communication made to them. They will start investigation, they would send for the girl, she may be sent to doctor for medical examination and our Indian society will look upon these things as undue harassment. What is your opinion about this view?

A. I do not anticipate such difficulties. People are not foolish to make these false complaints. I do not think we should try to create difficulties where none exist.

Q. Are there not practical difficulties?

A. I cannot myself believe that there are difficulties.

Q. It has been suggested that there should be a special force of women police to investigate into such matters. What is your opinion?

A. It would be difficult to get women for police.

Q. We were told in Ahmedabad that there were as many as 150 lady students who wanted admission to the training college but they were refused admission because there was no work for them. In view of this fact would there be any difficulty in securing members for the women police force?

A. Then it is a question of finance. It will be a very big question and to that extent it is not practicable.

Q. Some witnesses have suggested that while we are thinking of fixing the minimum age of marriage we might fix the maximum age for marriage for widowers as such. What is your opinion about it?

A. Yes. Recently a man of 70 married with a girl of 17. It was in the Bhatia community.

Q. I think the community condemns it? Is it not so?

A. Yes.

Q. Would you advocate legislation on this point?

A. I am not keen on this at all.

Q. I understand the Bombay Government are having a Bill preventing marriages between men of 45 or over marrying girls under 18. Would you support such a legislation?

A. Yes.

Q. We were told that the law as to the Age of Consent is not generally known by the people and that some propaganda work should be carried on to make the people acquainted with it. Is that true?

A. I think the propaganda that you are having now is very helpful. The touring of this Committee has created a good deal of propaganda.

Mr. Kanhaiya Lal: You have recommended 16 as the age for marriage and 16 as the age for consummation?

A. Yes.

Q. Do you think that it will be generally acceptable to the people in this Presidency?

A. Yes.

Q. Including the orthodox class?

A. They require crushing like mosquitoes. They will create such a trouble like mosquitoes but as soon as they are crushed there will be no difficulty.

Q. What about rural areas?

A. They are more amenable to reason.

Q. Do you expect any opposition from the rural classes?

A. No.

Q. Don't you think that in marital cases if the wife goes against the husband and gets her punished the result will be ill feeling between the husband and the wife?

A. In such cases I provide that the marriage should be dissolved.

Q. Supposing it were not possible would you not advocate some measure for bringing about good feeling between the husband and wife by some manner practicable?

A. How can you do it?

Q. One method suggested is that the offence should be made compoundable. Supposing a husband of 16 or 17 has committed a marital offence on a girl of 13, is it not good that it should be made compoundable so that good feelings might be restored between the husband and wife? Otherwise the husband may leave her and marry another wife.

A. The only result would be that the husband will commit the offence again. The wife will have no choice of further resistance.

Q. Suppose we take bonds from the husband for good behaviour after this conviction and compounding?

A. That would not help, it will be broken.

Q. Would you like compounding in suitable cases?

A. Once you start on compromise you do not know where you go.

Q. Are you probably aware that whipping is even now permitted in non-marital cases?

A. Yes.

Q. Don't you think if we extend that provision to marital cases the result will be that cases will not come forward? Don't you think you are increasing difficulties in the case of those cases coming to light?

A. I provide for the camera trials.

Q. Cases would not come to light, nobody would disclose them?

A. The suggestion of my friend would be very useful that associations should help in this matter.

Q. The relations of the girl or the girl herself would not like that the husband should be given such severe punishment and the result will be that the girl would not make a complaint.

A. If they are prepared to give evidence there they would also be prepared to come and give evidence in this case.

Q. Suppose the trial of marital cases is transferred after a preliminary enquiry to a matrimonial court consisting of one judge and 2 non-officials or a court consisting only of non-officials. Would that be helpful in increasing the public confidence?

A. I would insist on having a Presidency Magistrate.

Q. Would you like to have a matrimonial court consisting of a Judge and non-officials?

A. I do not see the necessity of matrimonial courts.

Q. Would you not have matrimonial courts to create more confidence in the public?

A. If they are presided over by a stipendary Magistrate then I would have no objection. I would rather prefer that there should be one Magistrate and if at all the non-officials have to come they should be as assessors to the Magistrate.

Q. You are in favour of marriage law fixing the age for marriage. Would you like as an auxiliary to that legislation a system of registration of marriages?

A. I think it would be helpful.

Q. Who should be the authority on whom the duty of maintaining these registers may be placed?

A. I cannot say.

Q. Would Municipal Boards or District Boards do?

A. Yes, it might be arranged. It is a matter of departmental arrangement.

## Oral Evidence of Mr. M. R. JAYAKAR, Bar.-at-Law, M.L.A., Bombay.

(Bombay, 24th October 1928.)

*Chairman:* For how many years have you been an advocate of the Bombay High Court?

A. 22 years.

Q. I understand you are connected with some social reform movement.

A. Yes. I have been a member of the Social Reform Association in Bombay for a long time.

Q. As to the present Age of Consent do you think there has been any dissatisfaction in this part of the country?

A. As regards marital cases, I think public opinion will tolerate an increase. I cannot say there is dissatisfaction.

Q. An increase would be tolerated up to what limit?

A. I would like to go up to 16, but I see difficulties in that. Keeping that as a goal we should fix it at 15 at present and work public opinion up to 16.

Q. Would you prefer a law penalising early marriages to the law of Age of Consent?

A. I would have both. I would have a Bill like Mr. Sarda's fixing the age at a somewhat lower level, and I would have a penal law raising the Age of Consent to 15 and rely on both.

Q. You want a law fixing the age-limit at a lower level in the case of marriage and a higher level in the case of Age of Consent, i.e., if it is 14 in the case of marriage it may be 15 in the case of Age of Consent.

A. Yes.

Q. Have you any reason to believe that in this part of the country there is any breach of the law of the Age of Consent so far as the intra-marital cases are concerned the law being 13 years?

A. I am afraid my knowledge of the portion of these laws is not very wide because I do not specialize on the criminal side.

Q. I am not speaking of the law courts.

A. Not in the middle class and Deccanics to which I belong. Of course my remarks are confined to the City of Bombay and Poona.

Q. Could you give us any idea as to when marriage takes place amongst the educated labouring class?

A. I am afraid I don't know anything about it. In all places like Poona and other important places like Deccan, I don't think there is any.

Q. You say that in this part of the country it is the deterring punishment that counts for the absence of any case coming to Court below 13. Is it so?

A. Very largely of course.

Q. What is the general age of puberty?

A. 13 and 14.

Q. May I take it that consummation before puberty will be uncommon?

A. Yes. I think so.

Q. Do you think now-a-days a period is allowed to elapse between puberty and the actual consummation of marriage?

A. In many cases. I am speaking of the higher middle class. Now-a-days owing to deterioration of health, puberty intervenes at an age which may be regarded as somewhat unfit for the consummation of marriage and many of

the families where education has penetrated they do allow a certain amount of time to go.

Q. Do you think that if we raise the law of "Age of Consent" to 15, as you suggest, that would be effective?

A. It depends upon what machinery you devise. I think that the present reason why the present law has not been rendered effective is due to the deterrent punishment with fines and imprisonment. That is the effect of practically frightening all kind of enquiries and information, but if you devise a very wise system of punishment to begin with and the machinery which will undertake the enquiry and the machinery which will constitute the tribunal, then that will be effective.

Q. What punishment would you like to prescribe so as to bring such cases to light?

A. I would like the punishment to be more preventive than deterrent, for instance, Security Bonds. I am not speaking of extreme things but I am speaking where the lapse takes place. I would even make the law more specific. The usual method is to leave the thing to the Magistrate's hands. As regards the first offence which is not of a very grave nature I would be content with a fine or a security bond or both. I would also suggest for the removal of the girl to places either with her relations or places like the Seva Sadan where they will be taken care of. An isolation should be established between herself and the husband or the relations of the husband; and the Magistrate should have the power of compulsorily removing the girl against the repetition of such an act.

Q. Would you like her to remain on a bond with her father or her husband till the Age of Consent?

A. I would attach a great value to the bond of the parent than of the husband. If the husband is over 18, the bond of the husband will do.

Q. As regards the machinery of enquiry, what do you say?

A. I would keep it non-cognizable.

Q. Who should have the power of making complaints?

A. I understand that two suggestions have been made. I have been discussing with Mrs. Nehru whether you should give exclusively the power of complaint to the parents or to Reform Associations. I would suggest that the power should be given to everybody. The Social Reform Association will come in of course; but I would suggest that I would have an officer something like the Director of Public Prosecutions to whom all the information should be submitted and who will examine the information; and every prosecution will be, after he has looked into the case and if he thinks that the prosecution should be started, he gives the information to Government and the State undertakes the prosecutions after his certificate that it is a fit case for trial. The Director of Public Prosecutions should be selected from any class of people who must not have the criminal mentality. I should prefer that he should be a member of the Bar not ordinarily concerned with the advocacy of a criminal character.

Q. If possible, would you prefer a Judicial Officer?

A. Yes.

Q. What method of enquiry do you want?

A. I don't think whether it will be possible to have any other method.

Q. Would you have women police?

A. But the women police have so far been confined to offences which are committed by the public women in England, and these offences will not be committed in the public. So I am afraid I cannot suggest any special safety in having women police. You will have recourse to the ordinary police.

Q. Do you think that the main reason for these cases not coming to Court, is the loss of reputation and family prestige and scandal that they bring upon the parents?

A. Yes, to a certain extent; but more than that, it has the prospect of the girl being a *quasi*-widow when you send away her husband to jail for two years and that is frightening the people more.

Q. Do you think that if this is amended, more cases are likely to go to Court even if we put the age at 15?

A. Of course, the committee is not in a position to recommend any propaganda but I think the committee is only concerned with the devising of machinery for the enforcement of the law. But I certainly think that this work will not be completed unless there are assessors in the machinery who will carry on this propaganda from place to place so that the people may take advantage because people very often go wrong out of ignorance. I certainly do not content myself with the legislation; I attach greater value to propaganda but I am not against social legislation.

Q. Do you think the Age of Consent at 15 is quite enough to secure safe motherhood and no injury to the children?

A. As I said, sir, I would work up to 16. In fact, you find Dr. Gour himself commences with 13 and is wanting 14 now in the course of two years. Well, it must be a tremendous progress during these two years. If you look at the Penal Code originally the age was much less than what Dr. Gour proposed.

Q. Would you be able to help us in one of our difficulties with any text on "Hindu Law" which either supports or is against early marriages and consummation?

A. I would be able to give you text both ways. But I think the texts will be thrown into the ocean. I could even give you texts supporting marriages at the age of 25.

Chairman: Let us have them by all means and we will give you a month's time if you like.

Mrs. Beadon: In one of your answers you have said that the punishment for the first offence should be a fine or a security bond or both and also the girl should be safely removed to a respectable home or some such institution, etc., for two years. Is there any danger if she brings a case against her husband? Can the husband set her aside?

A. The danger is always present, even under the existing law. So long as the Hindu husband can set aside a wife for any reason and as long as he can marry any number of wives as his pockets allow, there is always the danger.

Q. Is danger more in the case of segregation?

A. I don't think there is danger in the case of segregation. On the contrary he will realise that during these years she has studied sewing, cooking, knitting, etc. That adds to the value of the girl if at all he cares for her as a wife. I am not suggesting that these two years will be spent in vain. In these two years she will not only be literate but she may be educated.

Q. Do you know anything about birth registration here?

A. I know nothing.

Mrs. Nehru: When you suggest the employment of the Director of Public Prosecutions, do you want all prosecutions to be sanctioned by him previously?

A. All cases after preliminary enquiry should be sanctioned.

Q. Who is to make that preliminary enquiry?

A. The Police. I cannot suggest any other machinery under the present rules.

Q. Would you restrict this enquiry to any class of police or to any class of officers in the Police Department?

A. If you can make the Government to get a special class it would certainly be better.

Q. But as it is, would you restrict it to the Deputy Superintendent of Police?

A. But the enquiry will have to be done by the ordinary police which may be under his supervision or direction. Yes. I would certainly have a higher staff of the Police Department.

Q. Do you mean to say that an ordinary constable will do well?

A. No. If you can secure a higher type of official I agree with you.

Q. As for the trial of the case by the Sessions Judge, don't you think that it will involve a very long time as well as a great hardship for travelling a great distance?

A. Well: That depends upon how many cases come up under the amended law. If there are a large number of cases the Sessions Judge may go on circuit and try these cases one after another.

Q. Do you want to entrust the trial of these cases to tribunals made of Assessors or Jurors?

A. The Assessors will be there in the Sessions Judge's Court. I would make one suggestion that the Assessors in a case like this should be a certain number and if it is possible, to obtain members of his own community in order to have the consciousness of the sense of that community represented.

Q. What do you think of forming a special committee from the members of the same community to which the offender belongs to investigate into the matter?

A. I don't think it is practical. You will have nobody bound to give this information.

Q. Is an elaborate enquiry necessary for a case like this.

A. Not at all, but enough material should be placed before the Director of Prosecutions—what we would call in legal language a *prima facie* case. It is not necessary to go into the details of enquiry. But the more important enquiry will come later on after the prosecution is sanctioned by the Director but I wouldn't allow any prosecutions except on a certificate from the Director.

Mr. Mitra: What age do you recommend for extra-marital cases?

A. I would suggest 18, but I see difficulties of that suggestion. I would be content with 16 at the present moment. I would like to approximate to 18. Having regard to the climatic conditions of India, 16 in any case will be found quite feasible.

Q. From the general evidence we have, they are for 18 because we hear there will be no opposition from any community. Do you expect any opposition?

A. No. But I think there will be evasion of the law. It is certainly a much more perfect law than the law of 16; but I fear having regard to the present day conditions and the illiteracy of the masses, it may be evaded.

Q. Will you take it from me that in my province and other provinces there are lots of cases about abduction and seduction. In this case the girls of 16 are not really in a position to use their discretion. Have you any idea about this?

A. In this case I have very little experience but I would certainly think that 18 would be preferable. The only difficulty is that it may be evaded.

Q. Would you separate extra-marital and marital cases?

A. I would certainly put them together.

Q. Do you suggest that this trial should be in cameras?

A. Not as a rule. I believe of course, I have the superstition of a lawyer that we believe more in an open trial than one in camera except in very few cases where the proceedings are not published in newspapers. That is a power which is vested in the Judge even now and he has the right to decide that. But ordinarily I would much prefer an open trial.

Q. What do you think of the suggestion that the guardianship of the girl should be retained with the father even after her marriage?

A. It has very serious complications outside the domain of this law. On the civil side it would create a very great amount of trouble.

Q. Uptill a certain age, say, 16?

A. I don't think it will secure any advantage at all.

Chairman: There will be no chance for doing an offence?

A. I don't think that in actual life the daughter lives with the husband owing to this state of law because the husband is the lawful guardian; and your change of law is not going to alter the circumstances because I have just pointed out that the husband has always the upper hand whether you make him the guardian of the girl or not.

Mrs. Nehru: In that condition you don't think the temporary suspension of the restitution of conjugal rights is either necessary.

A. By changing the law as regards the guardian of the women affecting the rights of the husband, you don't derive any advantage because the husband can always insist upon the wife being sent in spite of guardianship.

Q. Why?

A. He will always threaten that he will marry another one. I don't think it will be effective.

Maulvi Mahomed Yakub: Breaches of law are committed in case of matrimonial matters and very few come to light. Would you suggest any method to bring more such cases?

A. If the sentence is lightened and the trial conducted by a tribunal, then more cases will come to court.

Q. Don't you approve that these cases can be tried by specially appointed matrimonial courts, such as the Parsi Matrimonial Court?

A. Yes. I certainly would prefer that.

Q. How is the Parsi Matrimonial Court working in Bombay?

A. It is working quite all right. The Jurors or Assessors are drawn from their own community who well understand the working of the social system. So if you really want to give the benefit of such a system to other communities, you will have to see that the assessors or jurors are drawn from that community to which the party belongs and then in that case there will be more confidence.

Mr. Bhargava: If the husband is the accused, I don't think you will advise that the Assessors should belong to the same community. If they belong to the same community, will not they always side with the accused?

A. I would have this law enforced with sympathy and with more humane view on the whole question. I would prefer to have a tribunal which will take a more humane and sympathetic view.

Q. The Judge might differ with the opinion of the Assessors.

A. As at present the Judge is not bound to accept the opinion of the Assessors.

Q. Are you for changing that law?

A. That is a matter which presents no difficulty.

Q. Would you prefer a Magistrate who is given powers under section 30, Criminal Procedure Code, to a Sessions Judge? I am suggesting this because the commitment stage can be avoided.

A. No. I suggest the Sessions Judge because he is also a Civil Judge. I will have nothing to do with the District Magistrate at all.

Q. Then you don't wish these trials to be conducted as in a Sessions case.

A. There will be only one trial on the certificate of the Director of Public Prosecutions. I can compare him to something like a legal remembrancer but the Director's main duty will be to look into the offence and then to give a certificate that it is fit.

Q. Would one man do for each province?



A. That depends upon the intention of the Government. If I were the Government I would certainly give one to each district.

Q. So far as the girls and her parents are concerned, I take it that every complaint made by them must go to the Director.

A. Yes. I would make no distinction for the complaint made by A or B. All must go for the preliminary enquiry before the Director of Public Prosecution.

Q. May I know what is the preliminary stage?

A. Gathering of some evidence.

Q. Who is to do that?

A. In the first instance the case must be reported to the Police. I would leave the law as it is. I am speaking of the enquiry stage and gathering of material will be done by the police in marital cases.

Q. So far as the difference between the age is concerned, will not 15 be effective if you keep it as the age for marriage as well as for consent?

A. I think it will be really very difficult. The age 15 will be more difficult for the marriage than the age 14. At 14 objections will be more than at 15. I would rather prefer to keep her for a year without consummation and it is not very difficult. I would be content if the age 14 is fixed for marriage and 15 for consummation.

Q. As regards the punishment, you suggest fines, bonds, etc. May I take it that if the age is raised to 15 this suggestion is to apply?

A. I would suggest that these security bonds, etc., may not be quite sufficient in cases of certain classes. In cases of heinous crimes the punishment may be more severe, say, imprisonment. Punishments vary according to the nature of crimes committed.

Q. How and why does a breach of the law take place?

A. I realise a breach of the law takes place in most cases out of ignorance than out of a desire to avoid the law, and it is very often done so under the false belief that the custom requires it or the religion requires it and therefore you have got to protect the genuine case.

Q. May I know what will be the difficulties if the law of guardianship is changed?

A. You will have the penal law as regards the property, and another law for the person. So you will have two different laws, one for the guardian of the person and another for the guardian of the property. This may conflict with one another.

Q. If the law of guardianship is not changed, and the father brings his daughter from the husband's home without the husband's consent, will he not be guilty of kidnapping?

A. No. I don't think your change of law of guardianship is going to give any relief. In a Hindu family the father invariably brings his daughter to his house. Where I differ from your view is this that your changing the law of guardianship—so long as the public sentiments and your tribunals and other difficulties remain the same—is not going to give you any relief and this is practically tempering with the guardianship law. If you can get the segregation of the girl, it does not matter who is the guardian.

Q. The parents of the girl will have the legal custody of the girl before she attains 15 or 16 and before that period the husband or the parents of the husband may not be able to insist that the girl may be sent to their house. Will not this change conduce very much to make the law effective?

A. I don't think it would conduce very much.

Q. As regards the offence of the parents, so far as the marital case is concerned, I understand, you make them responsible if the boy is a minor and you would keep the present law as it is as regards the breach.

A. That is in proper cases they may be abettors.

*Mr. Kadri:* You said that as regards the offence in the marital case you would prefer to have the trial by the Sessions Judge because of his civil experience; why then should the report be made by the police in the first instance to the Magistrate or Judge?

A. No. It will be made first to the Director of Public Prosecutions.

Q. Would you like the post of the Director of Public Prosecutions to be Honorary?

A. I would like to explain what I mean in this connection. I want some fresh mind to go into the facts of the case, before actual prosecution begins. I want him to be a lay man, an educated Indian, because, I think, he will do so in a more humane and natural manner than the District Magistrate. I am speaking subject to correction, but my opinion is that the District Magistrate has very often to deal with the police. He is the Collector of the District and he has the Police under him; and my experience is that his great obsession for the police is a nuisance. He is very often in harmony with the police, and I do not want it. That is why I want a separate individual altogether so that he may bring to bear a fresh mind on the subject.

Q. Do you think that at present very few cases come to court because the punishment is deterrent? Or is it so because people want to avoid the scandal that is generally attached to such cases.

A. I do not say it is not so. It is also a very important factor. But the more important factor is that you will be inflicting an injury on the girl by sentencing the husband.

Q. Do you not think that the law has generally been sympathetic to husbands?

A. That is known only to the lawyers, but not to the ordinary men. But even supposing I know of any of such cases I would think twice before going to the police, because by doing so I would not only be injuring the boy but the girl also.

*Mr. Kanhaiya Lal:* If you require the sanction of the Director of Public Prosecutions in every marital case, before the prosecution is started, is there not a danger of the offence being either suppressed or the evidence disappearing while these proceedings go on?

A. It depends upon the rapidity with which things move.

Q. Do you not think the sanction will take some time?

A. The same thing happens even now. I only replace the District Magistrate by the Director of Public Prosecutions.

Q. While the investigation is being conducted by the Police there is no chance of the evidence disappearing. That cannot be in case the Director of Public Prosecutions enquires into the case.

A. What will happen is that the Police will enquire and gather evidence and it will go before the Director. The Director will look into it and sanction the prosecution, and the case will then go to the Sessions Court.

Q. Supposing, instead of requiring sanction to be obtained from the Director of Public Prosecutions, which will be a close or one-sided affair, we make the trying magistrate to make a preliminary enquiry and then issue a notice or summons or warrant to meet the specific requirements, would it not be better?

A. I have suggested to you the Director of Public Prosecutions because in these trials his outlook would be broader than the Magistrate's.

Q. All the same the enquiry has to be made by some body.

A. It is only a recording of evidence.

Q. Do you want this Director of Public Prosecutions to record evidence before he sanctions the prosecution or will he act on the Police report?

A. The Police report will be made on enquiry and the Police report will contain the statements made by the witnesses. That will be the material on which the Director will judge.

Q. Would you have the same procedure so far as cases below 12 are concerned?

A. So far as cases below 12 are concerned I have not suggested any alteration in the present procedure. I am suggesting alterations only in cases in which girls above 12 are concerned.

Q. Would it not be better to have the same procedure in all marital cases?

A. I agree; but cases below 12 are of such a heinous nature that they do not require any special protection at all. Your difficulty comes in when you go beyond 12. These are cases where ignorance and custom play a large part and these are cases which require protection.

Q. At present if the girl is under 12, there is a preliminary enquiry by the Magistrate before committal? Would it not be desirable to have a similar enquiry by a Magistrate in cases where the girl is above 12 years of age, preliminary to the actual prosecution?

A. I am not keen on the intervention of the Director of Public Prosecutions. If you think that there should be an enquiry I have nothing to say against it. All that I insist upon is the intervention of the Director of Public Prosecutions to consider the nature of the offence and give a certificate saying whether further action should be taken or not. But I am not keen about the preliminary enquiry.

Q. In the case you suggest it will be a private enquiry.

A. I do not think I ever suggested that the Director makes an enquiry. He only looks into the evidence which has been collected by the police or by any other agency and then advises the prosecution. His function ends there. He has no time to make enquiries. He examines the evidence and then certifies whether the case is a fit case for prosecution or not.

Q. Do you think that a public enquiry would not secure the purpose better?

A. No; it will not.

Q. Instead of having a Central Matrimonial Court, would it not be desirable to have matrimonial courts for each district, comprising a Magistrate or Sessions Judge and two non-officials to try these cases?

A. Certainly it will be better if there is a matrimonial court in each district.

Q. Would you have a mixed tribunal consisting of a Sessions Judge and two non-officials?

A. The Judge should be the Sessions Judge only and he should be helped by two assessors. The responsibility should be the Sessions Judge's.

Q. Would it not be better to have three Judges, one a Sessions Judge and two non-officials?

A. It depends upon the kind of men you get. In every district it is impossible to have such men. You can get men in capital cities like Bombay. If it is possible it will be of advantage.

Q. If you have a law fixing an age for marriage and an age for consummation of marriage, would it not be desirable as an auxiliary to that legislation that we should have a system of registration of marriages for the purposes of record?

A. I have no objection to it provided you do not make it expensive.

Q. In other words if there is any fee it should be nominal.

A. Why should any fee be necessary at all? Provided it does not interfere with poor people, such registration would be advantageous.

Q. Do you think that in such cases a free marriage certificate should be issued by the registering authority?

A. That is what I meant by registration.

Q. But it is not issued in the case of the registration of births.

A. Registration of births is an imperfect system.

Q. Do you suggest that in the case of births also a certificate should be issued when the birth is registered?

A. I do not know about birth registration, but I certainly think that it would be an advantage if the marriage is registered and recorded a certificate is given.

Q. On whom would you place the obligation of maintaining these registers; would you place it on municipal boards or on the ordinary revenue authorities?

A. It depends upon the places. In Bombay I would give it to the municipality. In places where you cannot have regularity or strictness, it may be necessary for Government to maintain it. What I would like to have is regularity and strictness; and as it may not be possible to have these in rural areas, I should like Government to do it.

Q. Would you place the obligation to report these marriages on the parents of the marrying parties or the priests?

A. I would place it on the parents primarily and not on the priests.

Mr. Bhargava: Do you suggest that the Director of Public Prosecutions should be authorised to go into the facts of the case and see if there is a *prima facie* case and in fit cases sanction the prosecution?

A. Yes; just as the Advocate General issues even now a certificate in charity cases (under section 92). The materials obtained from the evidence are placed before him and then he decides and gives a certificate if it is a fit case for prosecution.

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### Written Statement of Mr. P. M. BHAT, LL.B., retired First Class Sub-Judge, Ahmedabad.

1. There is an amount of dissatisfaction in the minds of the progressive class of Hindu Society about the state of law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code for at the age of 13 or 14 the married girl is not sufficiently well advanced to comprehend and understand fully the responsibility of the childbearing.

2. The following facts would justify the change in the present law. The girls are married before 13 or 14 in several castes forming the Hindu Society. They are not capable of exercising their full will in the selection of the bridegroom. Parents do their best in selecting the boy, but the physical parts of the girl and boy have not fully developed before the age of 16 in cases of girls and 21 in cases of boys. The vigour of the mind is not there as to understand fully the responsibility of married life.

After the girl attains puberty it is a wrong notion to say that she is fit to perform the duties pertaining to married life.

There is nothing in Hindu scriptures which puts any bar on the training and schooling of girls. The mental parts should be fully cultivated before a girl or boy undertakes the duties and obligations of married life.

Now there is a growing tendency to give education to girls and in some well-advanced Municipal Districts compulsory education is recently introduced.

India is coming in contact with the West. I am not aware of any case where a Mohamadan has been prosecuted for rape on his wife before puberty.

7. There is no such injunction nor any penalty in the Mohamadan Law.

8. No.

9. Generally puberty is considered to be a proof for consummation of marriage though in cases of weakness it is deferred.

10. 13.

11. No This can be ascertained from the courts.

12. Yes. So far as it relates to physical debility of the girl and the subsequent difficulty of nursing the child.

13. No.

14. Yes. No sooner did the girl attain puberty her parents owing to poverty and in order to preserve the girl's chastity, are very anxious to get her married. We have not experienced any difficulty under sections 375 and 376, Indian Penal Code, puberty should be the only factor in determining the age of a girl to a certain extent.

15. Puberty is the real test for the Age of Consent.

16. Even in case of marriage, puberty is essentially considered.

17. In other cases, *i.e.*, without marriage whether the girl has attained puberty or not, they must be punished according to the Mohammadan Law.

18. Same as 17.

19. No.

20. We are against the both.

21. Education and social intercourse will cure the evils.

### Oral Evidence of Mr. P. M. BHAT, Chief Judge, Bhuj.

(Bombay, 25th October 1928.)

*Chairman:* Were you in Government service as a Sub-Judge?

A. Yes. I have now retired and am a Judge in Bhuj.

Q. Which district do you come from?

A. Surat District.

Q. Do you know the facts in connection with this question in Gujarat?

A. Yes; in Gujarat and also in several Deccan districts where I served.

Q. To what community do you belong?

A. I belong to the Mutala Brahmin community.

Q. What is the age of marriage you would fix for boys and girls?

A. For boys 21 and girls 16.

Q. You say that crimes of seduction and rape will be eliminated if there is a marriage law. Can you explain how that will be?

A. I only meant to say that seductions will not take place before 16 and the crime will be very much reduced.

Q. In para. 20 you say that the age of marriage for girls and boys should be either 14 and 18 or 16 and 21. What do you mean? Do you mean that 16 and 21 would be ideal, but that 14 and 18 might be fixed as a first step?

A. Yes; my personal opinion is that the ages should be 16 and 21; but if the Legislature passes 14 and 18 as a first step I have no objection.

Q. Have you reason to believe that in these parts of the Bombay Presidency there is consummation before the age of 13 which is the statutory age?

A. In the higher castes it is not the case. Only in the case of second wives there is that haste. Generally speaking in Gujarat and Deccan there is no consummation before 13.

Q. What do you think is the chief reason for breaches of the law of the Age of Consent not coming to light?

A. The promulgations of the law are not done on the right lines. Publications of a law in the Government of India Gazette or the local Government Gazettes are not the right means. For instance, the Salt Act, the Tobacco Act and the Opium Act are not generally known amongst the people.

Whenever people who commit offences under these Acts are hauled up, they say that they did not know there was any such law at all. In the same manner I think ignorance of the law is the chief cause. Another cause is lack of education.

*Q.* Do you think that one of the reasons might be that in men's minds there is a feeling that they should not involve their sons-in-law in such cases and bring them to court?

*A.* Formerly several groups were homogenous and there was the force of society. If a boy or girl had committed an offence it was announced by means of tom-tom. But now cities are growing and there is freedom of action of individuals. The force of society is dwindling down and there is not the same touch with one set of people and another.

*Q.* Even supposing there is want of hold how does it prevent these cases from coming to court?

*A.* The autonomy of the castes has gone. Formerly the caste patel or panch could outcaste the man for the offence, but now he cannot do so. There is freedom of action and nobody interferes with another's actions.

*Mrs. O'Brien Beadon:* In para. 11 you say that you have come across cases where young girls have succumbed to early consummation. Can you give us any cases which have occurred in the last 5 years?

*A.* I know of no cases in recent years. I have heard of such cases, but I have not been an eye-witness.

*Q.* Does that mean that the marriage age is going up now? Why do not such cases come to light?

*A.* It is due to the fact that people think that it is against prestige.

*Q.* Do you know of any cases in which injury has resulted from early maternity?

*A.* Yes; I know of a case which happened three years back. It was a girl in a rich Nagarseth family. The girl was married at the age of 12. She had her first child-birth at 14 and died immediately after.

*Q.* Have you seen any cases in which the delivery in the case of early mothers has taken place fairly easily? Have you seen the children in such cases?

*A.* I have known of girls giving birth to children at the ages of 14 and 15 and in such cases generally they lost their lives at 24 or 25. The children of such mothers are rickety.

*Q.* Do the children suffer?

*A.* Yes; they are usually given Virol and other medicated foods. There is no mental fire in the children. They cannot take part in the school drill and they cannot stand in the sun for one or two hours.

*Mrs. Brij Lal Nehru:* You say that the crimes of seduction and rape occur amongst the backward classes. Which classes do you refer to?

*A.* The Shepherd or Rabbari classes; and in cases where there is paucity amongst certain classes seductions do take place.

*Q.* Do you know of any castes amongst whom there is paucity of women?

*A.* There are some backward classes like the Ahirs. and the Cowherds or Gowalias. Amongst them girls are carried away, and then the caste people assemble together and they fix the dowry to be given to the parents of the girl and the marriage ceremony takes place.

*Q.* Do they seduce girls from other castes?

*A.* No. They seduce girls from their own castes, because there is intimacy between the boy and the girl. Seductions therefore take place in the same caste. There is still that hold in caste-ridden India.

Q. Does abduction take place in great numbers?

A. No; only seductions take place in great numbers.

Q. You say that in some cases where the husband has married for the second or third time cohabitation takes place earlier. Is there a large number of that kind of people? What would be the percentage of such people?

A. In Gujarat there are a large number of such cases. I think the percentage will be about 20 or 25.

Q. You refer to social force which will put it down. Has that force ever been exercised?

A. It is non-existent. No one feels for the girls. Even in the higher castes widow-marriages are strictly prohibited. If we perform widow-marriage there would be uproar in our castes. Of course it is nowadays going down to a little extent.

Q. In the same paragraph you say that legislation is not only necessary but it is the right thing. Otherwise social progress cannot be achieved. Would you like the State to penalise marriages by law?

A. Yes.

Q. Do you think such a law would be acceptable to the people?

A. I think people holding progressive views and who understand their duties and the principles of nationhood would prefer this. To check the vagaries of individuals law is absolutely necessary. We have been clamouring for social reforms without results.

Q. Do you think that legislation in this direction will be welcomed by the people and that it is needed?

A. Yes; it is essential for the welfare of the people.

Q. You say that our ancestors had longer lives than we have. What do you put that down to?

A. There are two or three reasons. The first is we cannot get proper food; we get only adulterated food.

Q. Has this anything to do with early marriage?

A. I am talking of 50 years ago. Then there might have been early marriages, but consummation of marriage was taking place later, and after pregnancy the girls were kept for some time in the parents' house. Nowadays transport facilities are available and the wife goes to the husband soon after delivery.

Q. Do you think that nowadays in the present generation consummation of marriage takes place earlier than it took place amongst our ancestors?

A. Yes; formerly there was sufficient lapse of time after the first menses or puberty.

Q. I do not understand your answer to question 14. Can you tell us what you mean?

A. What I mean is this, that among the higher classes they do not like this. But amongst some of the lower classes the women favour early consummation.

Q. Is it in large numbers?

A. Yes; it is in large numbers in backward classes.

Q. In para. 19 you say that vigilant societies should be formed in each and every caste forming the Hindu society. Would you like these vigilant societies to be given the power of complaint?

A. They would be essential witnesses. But I would not give them the right of complaint. In a homogenous village containing 3 or 4 thousand souls everything connected with the marriage will be out and I would like these vigilant societies to be cited as witnesses.

Q. Would you give them power to complain in the case of an infringement of the law?

A. No; I think first class magistrates on the complaint of the parents or persons interested in the welfare of the boy and the girl should take cognisance of such cases.

Q. But the parents of the boy or the girl or persons interested in the couple would not complain.

A. No.

Q. Would you therefore like that these vigilant societies should be given the power to complain?

A. I would accede to that.

Q. What about the punishment?

A. The present punishment is quite sufficient.

Mr. Mudaliyar: You quote certain Sanskrit texts and you draw the inference therefrom that the girl must be ripe in understanding. These texts are in Sanskrit and they are not recited in the vernaculars. Do you suggest that at any time these texts were understood by any class of people at the time of marriage?

A. If you go to the early times you will find that the boy understood the texts because by the time he was married he was 25 and had completed his Sanskrit studies.

Q. I am suggesting to you that at no time in our history were all the Aryans in a position to understand these texts.

A. I demur to that. The early Aryans understood these texts.

Q. Do you believe there was the caste system then?

A. Yes; there were the four Varnas.

Q. Were these texts recited by all the four Varnas?

A. No; only the first three Varnas; the Dwijas.

Q. Do you mean to say that all of them understood the texts?

A. That is my idea.

Q. Do you not think that it is an ideal?

A. It was a practicable thing then.

Q. Are you aware that there were 8 systems of marriage then prevalent?

A. Yes; and this applies to the Brahma or the sanctified system of marriage.

Q. Do you think that all marriages in those days took place according to that form?

A. Yes; amongst the Dwijas or the twice-born.

Q. Were there not two forms of marriages; the Pratiloma and the Anuloma?

A. Yes.

Q. And there ought to have been certain castes to whom these texts could not have been applicable. May I also suggest that in the cases where they were recited it was the priest who recited them and the boy or the girl generally could not understand them?

A. I think so far as Brahmins were concerned the boys understood the texts when they entered into wedlock and the girls also understood their duties.

Q. Do you think that the girls in those days understood the texts?

A. There were days when Sanskrit was the mother-tongue in the Prakrit form and the girls understood it. And they knew the Mahabharata and the Ramayana which were the most educative factors in those days.



Q. Even now our ladies know more of Ramayana and Mahabharata. But I am suggesting whether you think it possible that they understood the texts in those days?

A. I am of opinion that they understood it.

Q. You suggested that in the villages in the past there was homogeneity and communal feeling and these conditions checked the vagaries of people and prevented early consummation though there was early marriage. And now that these are breaking down, you think that some agency should step in to prevent early consummation and that agency is the State. Is that your view?

A. Yes.

Q. You suggest that the age of the boys and the girls might be put down on the invitation cards. I take it you are not suggesting it for the purposes of legislation.

A. I meant it only to be a suggestion, and not for the purpose of legislation.

Q. What is your idea about vigilance societies? In the present state of affairs in the villages do you think that these vigilance societies are possible? Can you find people to take up this work?

A. Of course, there will not be many men available in the villages. But we have to choose from the material we have.

Q. Do you think it is at all possible to form these Committees?

A. I think it is absolutely necessary for the advancement of the country.

Q. Is there such a thing as the headman of the caste in the villages now?

A. Yes; there are caste Patels. In every caste there is a Patel, and he exercises caste autonomy.

Q. How would you make him responsible for marriages below a certain age?

A. I would make him responsible in this respect, that he should report marriages to the first class magistrate in the Taluka and then proceedings should start.

Q. Do you not think that these early marriages would be performed by those who would be elected to the vigilance committee. In that case who would report?

A. Then it is difficult.

Q. Is it not a fact that those castes who do not have early marriage amongst them are taking to them because they want to imitate the superior castes?

A. So far as consummation is concerned, I do not think it is so.

Q. Who is the eminent jurist, whom you quoted as saying that the law needs to be enacted to regulate and control the vagaries of human beings?

A. Earl of Hailesbury.

Mr. Mitra: In para. 7 you say that early texts have to say something against early consummation of marriage. Will you kindly refer us to the texts?

A. I will send you the original text from Bhuj..

Q. I understand that you are for fixing the age of marriage for girls at 16 and that you don't want any Age of Consent within the marital state?

A. Yes

Q. You do not say anything about the Age of Consent in extra-marital cases. Do you not think it should be higher?

A. Yes; I would put it at 18.

Q. Do you think that these marital cases might be made a separate class of offence?

A. No; the present law is quite good.

Q. Have you anything to suggest as regards the procedure?

A. I have nothing to suggest.

Q. Would you like trials in camera in marital cases? Several witnesses have suggested that if this is adopted there is a greater chance of cases coming to court. What is your opinion?

A. I have no objection if you wish to insert that.

Q. Have you any experience of registration of births in the villages?

A. In the villages the Police Patel keeps the register. Whenever a boy or girl is born in the village it is generally out and the Patel makes the entry in his register.

Q. And what is the system of registration in the cities?

A. In the municipal areas the duty is cast upon the parents to report and upon the inspectors to register. In cases of omission to report the parents are liable to punishment.

Q. Are the births registered accurately both in the villages and in towns?

A. I think so.

*Maulvi Mohammd Yakub:* Is there any age for marriage fixed in Western countries for girls and boys?

A. I think it is 21 for girls. Below 21 they can marry with the assent of the parents or guardians. I think so; but I am not sure.

Q. Would you like that there should be the same legislation in India as they have in England?

A. Not now. Let us proceed slowly. By big jumps we will cut down progress.

*Mr. Bhargava:* You said that in some classes cohabitation is common before puberty. Is it not a fact that in the Shepherd classes consummation does not take place before puberty?

A. I think that amongst them there is some such custom; but I do not think it is a fixed custom.

Q. Do you think that consummations take place earlier now amongst the higher classes than they were taking place 50 years ago?

A. Yes; nowadays boys have consummation at 17 or 18 and have two or three children when they pass the matriculation examination.

Q. What was the age of consummation amongst our ancestors?

A. The boys were usually about 25 and the girls were 17 or 18 years of age. That was mostly due to the religious turn of mind in those days.

Q. What has transpired within the last 50 years for the age of consummation to go down?

A. It is a very difficult question to answer.

Q. Some witnesses have stated that as a matter of fact the age of marriage some 30 or 40 years ago was much lower than it is now and that we are progressing towards a higher age.

A. No; formerly girls were about 18 and boys were about 25 when the consummation took place.

Q. Can you give us any reason why such a vast change has taken place in the last few years. Formerly you say that the parents of the boy and the girl so arranged matters that the couple met a fairly long time after the child-birth; but they now meet within a very short time. Can you tell us what that is due to?

A. I think it is due to want of restraint. In olden days the occupation of the whole family was only one; it now varies, and if a parent has got 4 sons the sons take to different occupations and each requires the help of his wife

in the particular kind of work which he is doing. That is how of necessity the interval becomes very short.

*Q.* Do you think that a law which would place an obligation on the parents not to allow young girls and young wives to go to the mother-in-law's house before the age of 16, would work satisfactorily?

*A.* It would. If you want liberty you must have restriction.

*Q.* In your opinion this law of the Age of Consent is absolutely necessary?

*A.* Yes.

*Q.* So far as marital law is concerned you think that unless we have a marriage law fixing the age of marriage for boys and girls this consent law would not be very effectual?

*A.* Yes.

*Q.* Must we have both these laws?

*A.* Yes.

*Q.* About the vigilance societies—so far as Gujerat is concerned, how many villages have you got in which there is a population of 2,600, and above?

*A.* There are too many but the general population is about 500 people in the rural districts of Godhara and Panchmahal where Bhils are inhabited. So far as Surat is concerned there are too many villages.

*Q.* Even in these villages there are different castes?

*A.* Yes.

*Q.* So that if the vigilance committees were to be formed on the basis of castes there would not be sufficient number of people coming forward?

*A.* Why not?

*Q.* Because if there are 10 castes the number in each caste would be small?

*A.* Formerly, if you are aware, there were 12 persons who formed the village unit. In the villages there are no sub-divisions.

*Q.* Supposing there is one Bania, would you not form a caste panchayat for him?

*A.* No, there is panchayat for the whole village.

*Q.* This vigilance committee when it is formed what work would you entrust to it. Would you say that it is a vigilance committee to inform the authorities if there is any breach of consent law or marriage law?

*A.* Yes.

*Q.* When the report has reached a particular authority that authority will be the ultimate judge—whether to take any action or not?

*A.* Yes.

*Q.* You say that there should be registers of marriages. Do you realise that so far as registration of marriages is concerned, it must be an all-India question and it must be decided on a basis which is acceptable to the whole of India. There might be some parts of India in which societies may not be formed.

*A.* You may make it obligatory.

*Q.* What is your idea of register of marriage? You mean whenever a marriage is celebrated it ought to be entered in that register?

*A.* Yes; only to keep a record but generally marriages in this part are not challenged.

*Q.* If marriages are not challenged why do you advocate the registration of marriages?

*A.* To enforce the law where the marriage has taken place at a certain age.

*Q.* You have said that even now in this Province the registration of births is very accurate?

*A.* They are fairly accurate.

Q. If that object is secured what is your idea of keeping marriage registers?

A. Because when you put down a certain age by legislation and if any marriage takes place below that age that would simply serve as a ready reference.

Q. Who will report the age?

A. The vigilance committee. They will ask the parents at the time of marriage.

Q. Parents are the likely persons who will be prosecuted if they marry their children at an early age?

A. But there must be some fear of law.

Q. I understand that if there is conflict in the entries of marriage and birth, you would prefer the birth entry?

A. Yes.

Q. So that there will be a danger of conflict between the entries?

A. One will be a check to the other.

Q. One could be made up when the man is in fear of prosecution?

A. Marriage does not take place in camera, everybody knows it.

Q. So far as age is concerned birth entry will be one piece of entry.

A. In villages they do not know the age of the girl and the boy so there is very little chance of incorrect entries.

Q. Will the entry be the same in many cases as the birth entry?

A. Yes.

Q. Then the reason for having marriage registration will vanish.

A. I have put it as a safeguard. When we put down certain suggestions they help in enforcing our laws.

Q. You say that so far as complaints are concerned parents or persons interested in the welfare of the girl should be given the right of complaint. What is your idea about these persons interested in the welfare of the girl? Any man may come forward and say that I am interested in the girl.

A. The State is in the welfare of the minors and that duty is delegated to the parents or guardians, and then to those who are interested in the girl.

Q. So I understand that you do not want any change in the law?

A. No.

Q. You have said that if the law of marriage is passed there is no occasion for the consent law being passed. Why do you think so?

A. Penalise the marriage.

Q. Marriage cannot be dissolved; why do you declare it illegal?

A. If you want to exercise the rigour of the law there must be something like that. If a marriage is celebrated before a girl is 16 and a boy is 21 I would declare it illegal.

Q. Do you realise that that particular girl will never be married?

A. There might be persons who will accept her. Strict laws are necessary to improve the morals.

Mr. Kadri: You say that with Mohamedan rule came the idea of protecting girls. Have you got any authority to say that before the Mohamedan rule girls were not married below a certain age?

A. It is a question of traditions.

Q. What was the age before Mohamedan rule?

A. 25 for boys and 16 for girls.

Q. So you have no authority except traditions?

A. You can see Todd's Rajasthan. There were inroads by Mohamedans over unmarried girls and if the girls were married there were less chances of inroads. Now we are enjoying freedom and these ideas should vanish.

*Maulvi Mohd. Yakub:* Could you give us some authority from history?

A. I know it from legends. I have read Bhats and Charans.

Q. Don't you think that these legends and histories were prepared to create a gulf between the Hindus and Mohamedans by the third party who desired that the two communities may remain apart?

A. I cannot say that.

*Mr. Kadri:* You do not agree with the view that the law as it stands has not been effectual?

A. The laws enacted are for our good and any defiance of it ought to be safeguarded. There might be very rare exceptions but the existence of law creates fear into the minds of the people.

Q. If the marriageable age is fixed at 16 and 21 this provision of the law goes away automatically?

A. Yes.

Q. In that case would you also raise the Age of Consent to 16?

A. Yes.

*Mr. Kanhaiya Lal:* As regards panchayats, I understand that your idea is that each village unit is to have one panchayat for vigilance purposes?

A. It will depend on the population of a village.

Q. You would have panchayats consisting of representatives of all castes?

A. Yes.

Q. Would you require a preliminary enquiry in a marital case before a notice is issued by a magistrate?

A. I would not entrust it to police officers. I would rather entrust it to the vigilance committee to collect evidence and place it before a first class magistrate.

Q. Would you like that this enquiry should be made invariably by an officer of high rank like the Deputy Superintendent of Police or Inspector of Police?

A. I think he should not be below the rank of Deputy Superintendent of Police.

Q. If that is so, would you have no objection to allow the case to remain cognizable?

A. Yes.

Q. Do you think it will be desirable to transfer marital cases after the preliminary enquiry to a matrimonial court for trial?

A. Yes.

Q. You think these courts would inspire more confidence.

A. Yes, because they would have men of equal status who would be in a better position to judge and I take it that even ladies might be able to take part in these courts in course of time.

Q. Don't you think that in marital cases there is a great danger of a serious gulf being created between the husband and the wife by reason of the prosecution?

A. I think it will go down when they are not angry and good feelings may be restored.

Q. Would you like that we should do something to help in restoring these good feelings by allowing the case to be compounded?

A. Yes.

Q. Irrespective of the age of the girl?

A. Yes.

Q. Who would compound them on behalf of the minor girls?

A. Their guardians.

*Q.* In cases of serious injury would you like them to be compounded with the permission of the court?

*A.* Sanction of the court is necessary in every case.

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**Extract from letter dated the 16th August 1928, from Mr. JAMNADAS M. MEHTA, M.L.A.**

The Committee will kindly regard the replies of the Bombay Corporation as mine.

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**Oral Evidence of Mr. JAMNADAS MEHTA, M.L.A.**

*(Bombay, 25th October 1928.)*

*Chairman:* You have not sent us your written statement.

*A.* The Corporation sent a reply and that represents my opinion.

*Q.* May I understand that this opinion was formed by a committee of the Corporation?

*A.* Yes, the special committee which attends to this sort of work. It is the Law Procedure and Election Committee.

*Q.* Are these the views of the Corporation?

*A.* After this committee made its report to the Corporation the Corporation adopted it in a meeting. That was on the 27th August.

*Q.* Was it adopted by the Corporation as a whole?

*A.* It was passed in a Resolution of the Corporation.

*Q.* Your personal view differs as regards the age of marriage only?

*A.* Yes, I want the age of marriage to be 16 and the Corporation wants it 15. The age of 16 was lost by a narrow majority and the chairman gave his casting vote against it.

*Q.* What should be the minimum age of marriage for a Bill like the Sarda's Bill?

*A.* Personally I think marriages below 16 years should be prohibited and for boys I would not mind 21.

*Q.* As regards the Age of Consent, the Corporation adopted 15 within marriage and 18 outside marriage?

*A.* Yes.

*Q.* In answer to question 14 what are those meetings that you are referring to?

*A.* When this Committee considered this questionnaire and framed the answer there were various meetings held in Bombay. There were several meetings of certain bodies and ladies gatherings in this city. I think about 17 or 18 public bodies representing women in this city have supported this. Besides we referred to the meetings held from time to time without referring to this Committee or to the Sarda's Bill and lectures delivered by various people and to the general activities of the ladies gathering in the city and also in the Presidency. We are referring to no definite gathering in this reply.

*Q.* Do you know of any meeting here in Bombay dissenting from the views expressed by ladies?

*A.* No.

*Q.* Were there any meetings to protest against the Sarda's Bill or anything of that kind?

*A.* I cannot recall any such meeting having taken place.

Q. In answer to question 17 you want the offences in marital cases to be put under a separate section. Why do you want it?

A. The idea was that this was not a crime in the ordinary sense of the term. We were making it a statutory crime for the society as constituted. It is to meet the sentiment of the people.

Q. In answer to question 20 you say that the Corporation are of opinion that penal legislation fixing the minimum age of marriage will not by itself be effective in protecting girl wives from early consummation. Supposing a marriage law penalises marriages below 15 or 16, why should it not be sufficient? Supposing such a law were enacted by legislature where is the necessity of the Age of Consent law?

A. That simply means that all the measures of social reform should be co-ordinated and should proceed side by side. It does not mean that it does not lead to beneficial results at all.

Q. Supposing there is a law penalising marriages before 16, would it not prevent child marriages to that extent?

A. Yes, it would prevent to that extent but it would not be effective by itself.

Q. Then you want both the laws.

A. Yes.

Q. Do you want them same age for both?

A. Yes, in my opinion it should be 16.

Q. What do you think is the general age for consummation in a vast majority at present? Would you say it is below 13?

A. With education it is steadily rising. It must be said that public opinion outside the educated classes has no definite notion of marriage. Therefore after a girl attains puberty whatever her age consummation follows.

Q. Have you any reason to believe that in the Gujarati community consummation takes place after puberty even if the girl is 13?

A. Yes.

Q. You mean to say that there are many girls who become mothers at 14?

A. I have known during the last few years many young girls who were mothers at 15 which means that they must have consummated marriage at least 14 months earlier. The result is that they fade before they flower. The consequence has been that in the Gujarati communities there is a great dearth of girls with the result that sale of brides is much more common in Gujarat and Kathiawar than perhaps in any other part of India.

Q. What is the reason?

A. The women die in larger numbers on account of early consummation and early maternity. The general health of the women is of a very very low standard.

Q. I see that the Corporation has not thought fit to answer to questions 5 to 9.

A. Whenever there was any acute difference of opinion the Committee thought it was not better to express an opinion.

Q. I should have thought there was no difference of opinion on question 9?

A. Probably it was on account of the 2nd portion. As regards question II the Corporation thought that the professional experience of certain members should not be allowed as an opinion of the Corporation.

Q. Have they not sent a representative?

A. You wanted a reply till a particular date and they could not nominate a representative.

Mr. Kanhaiya Lal: You have said that early consummation is very common in Gujarat and Kathiawar?

A. It is also common in Maharashtra.

Q. In what communities?

A. Generally it is so. Educated classes form a very small percentage.

Q. We are told that among the Bramha Kashatrias the age of marriage has risen very high?

A. Perhaps I would accept that.

Q. Among Nagar Brahmanas the age is fairly high?

A. Nagar Brahmanas are scattered all over the Gujarat. Probably you mean Nagar families in the Ahmedabad city. I do not think that the statement about Nagar Brahmanas could be taken as correct if you take the whole body of Nagar Brahmanas in Gujarat, Katch and Kathiawar into account.

Q. Have you any particular classes in view when you say that early consummation takes place largely in all communities?

A. That is the general experience in respect of all communities.

Q. What is the usual age of marriage among those communities?

A. Now it is growing. I was married when my wife was 7 years old and I was 12. Although there has been reform since then, it is by no means extensive.

Q. What is the usual age of marriage now?

A. It has come to about 12 among the educated classes.

Q. What community you belong to?

A. Kayastha.

Q. What about the Bhatia community?

A. I think the richer the man, the more chances of his getting a bride.

Q. What is the usual age of marriage among them?

A. It is now growing. I have got some personal friends among them, and from the marriages I have attended in their families I can say that the girls are generally of 14 or 15 years.

Q. What about Marwaris?

A. I am speaking of Gujaratis in particular.

Q. Among Vaishyas?

A. There is no limit. Bhattas in up country are as bad as anybody else. In some cases the marriage is late because brides are sold to the highest bidder. I am not setting it up as a general proposition and by referring to it I do not mean any aspersion on that community; but there was recently a marriage of a man of 70 years with a girl of tender age.

Q. Will you tell us whether you can suggest any measures for making the law effective so that more cases may come to light?

A. I think the various ladies associations should be addressed on this subject by Government and if any advisory capacity could be given to their association in the matter of reporting and advising Government they would be able to give you far more co-operation and real help without turning that power into an engine of oppression.

Q. Should any other social reform organisations be given that power?

A. Only ladies associations.

Q. Would you give that power to caste panchayats?

A. Caste panchayats would not help you.

Q. Would you like to create local panchayats to serve as vigilance societies consisting of representatives of different classes in towns and rural areas?

A. My point is that they would not work unless women are associated with these.

Q. Women may also be there?



A. In rural areas it is not possible to find women who will take interest.

Q. As a commencement would you recommend vigilance societies or local panchayats consisting of different classes including women?

A. Yes, I would not mind making an experiment with that, but my view is that without women associations co-operation would be difficult.

Q. Would you make marital offences cognisable or non-cognisable?

A. I agree with the Corporation view as stated in the replies, I would make it non-cognisable because we do not want that this should lead to harassment.

Q. Irrespective of age you would make every case between husband and wife non-cognisable?

A. Yes. We differ from the present law and we have said that in no case the police should interfere.

Q. You have made this modification that besides the parents or the girl herself you would give authority to women associations and vigilance societies to make complaints and institute enquiries.

A. Yes, that is my personal view.

Q. Till such ladies associations are available may we have representative panchayats to do the work?

A. I would not object.

Q. Would you require that when the magistrates take up these cases on complaint, they should invariably make a preliminary enquiry so as to safeguard any harassment?

A. I take the safeguard in the beginning.

Q. Even so there might be persons actuated by malice?

A. The magistrate would see through that.

Q. Would you prefer if these cases are, instead of being tried by the ordinary courts, made over to a matrimonial court consisting of a magistrate and one or two non-officials?

A. I do not think there is any particular advantage. The point is that it should be made a crime and tried by an ordinary magistracy. We have created it an offence for the purpose of improving the health and general well being of the community. It is not in view of the atrocity against the wife, but it is a crime against the society.

Q. Your object is that these cases should be tried with a certain amount of humane consideration?

A. Yes.

Q. Is there not a risk of estrangement being created between the husband and the wife by such cases being tried with publicity in the ordinary courts?

A. Yes, there is some advantage if they are tried by a matrimonial court but the risk is there the moment the legal action is taken.

Q. Would you make these marital cases compoundable?

A. I do not mind.

Q. Would you make them compoundable with the sanction of the court according to the degree of criminality or without it?

A. There will of course be criminality in view of the age of the husband and the age of the wife. If you want to distinguish in that sense and thereby make it compoundable or not, it is a matter on which I have no definite opinion but I would not be against making some distinction, if it is found necessary.

Q. That is to say you would require every marital case to be made compoundable but only with the sanction of the court.

A. Yes, that would serve my purpose.

Q. Is your system of registration of births satisfactory in Bombay?

A. Yes.

Q. Could you tell us what is the system in Bombay?

A. Everybody is required within a certain number of days to make a report of birth and death to the municipality's ward office in the city.

Q. A written report?

A. Yes.

Q. Is the name of the child entered in that report?

A. Generally no name is given in the Hindu community before 6 days. Therefore name is not always necessary but perhaps later on the municipality takes the trouble to find it out.

Q. Is that name ascertained from the vaccination register at the time of vaccination or do you require a supplementary report of the name of the child?

A. I cannot tell you.

Q. Would you recommend a supplementary report being required from the parents or guardians giving the names of children for purposes of identification?

A. I would suggest that anything which would make it more definite may be done.

Q. Several suggestions have been made. One is that at the time of vaccination the name should be entered in the register of births?

A. Vaccination comes much later.

Q. The second suggestion is that every man should make a supplementary report within 3 months or 6 months giving the name of the child and it should then be entered, or that the man reporting the birth of the child should also say whether it is the 1st, 2nd or 3rd child of that particular woman so that if the order of child-birth is given there will be some help in identification.

A. I have not thought over it. It seems to me that if only the 3rd, 4th or 5th child is given there would be difficulty because the people are illiterate and they do not always remember which child it is. Some confusion will arise in the case of crime when a girl is being identified. You will find that where one girl is entered it ought to be the name of another girl. Suppose the girl kidnapped is Narbada, but Narbada may be the name of some other child.

Q. Could you make any constructive suggestion?

A. I have no suggestion to make.

Q. Would you recommend a system of registration of marriages as an auxiliary to the legislation on the question of age of marriage and age of consummation, giving the names and ages of the parties marrying?

A. That statistical information would be very useful.

Q. Who should keep these registers of marriages, the police or the municipal authorities?

A. I do not know how it will work. The police are the executive authority. Experiment may be made by allowing the municipalities to maintain these registers and if any difficulty is found or the municipality objects to being burdened with additional work, steps may be taken to do something else.

Q. On whom would you place the obligation of reporting these marriages—on the parents or guardians or on the priest?

A. I think parents and guardians should do it.

Mr. Kadri: It has been suggested that as a safeguard you may have a Director of Public Prosecutions that is to say in case of offences within the marital relations the evidence may be placed before him and if he considers that a case is fit to go to court prosecution may be launched otherwise it should be stopped?

A. Who should first of all go to register a complaint?

Q. There may be an ordinary complaint made to the district magistrate who will order an investigation by an officer of the police not below the rank of Inspector?

A. That will conflict with our view that this should not be turned into an engine of oppression.

Q. Supposing he is not satisfied with the case he will order a further enquiry.

A. We say that we will give the right of complaint to the guardian and afterwards it should be treated as an ordinary case.

Q. The suggestion before us is that before he issues any warrant or summons, the papers should be scrutinised by a Director of Public Prosecutions. The advantage is this that this man would be distinctly separate from the police traditions. If possible we would have an honorary man to do this work?

A. I think there should be some mitigation of the harassment and as it would cause some embarrassment to the parties I would leave it to the ordinary process.

Mr. Kadri: It was suggested by one witness that we should have women police to investigate these offences. It was said that they would do much better in such cases. Do you approve of the suggestion?

A. If you can recruit women police force I should be very glad. Because of the difficulty in the way of doing so to-day we have suggested these social reform ladies' associations to assist in investigation.

Mr. Bhargava: Do you think that the women police force will be any better than the police that we have now?

A. We do not know. We have not tried. Naturally ladies' police should be more effective and more helpful. Appreciation of the whole thing would be better.

Q. You have suggested that the right of complaint should be restricted to parents and the girl wife and in the absence of parents to such person as would have been her guardian if she were unmarried. That is one way of doing the thing. I would suggest another. All the information regarding these offences may be stored in one place. The village officials, the patels, the headmen and others should be under obligation to report these cases. In fact, there should be an obligation on every man to report. After this information is stored up then some of these cases might be selected, in which prosecution should be initiated, by the Director of Public Prosecution, or by the District Magistrate or by some Committee. As regards the Director of Public Prosecution there will be one difficulty, it presupposes police interference. Will you like a proposal of this sort that all cases should be sifted by an impartial authority before they come to court?

A. It looks plausible but still I would favour our general simple method. In these matters we are not to look at the number of cases that escape punishment. It is possible that if we strictly adhere to what we have suggested there may be cases where the marriage is consummated earlier than the age fixed, but the law need not be administered harshly in these cases. Just as, in the case of free compulsory education, although we make a failure to send the boy to school punishable, we do not administer the law as to be any hardship for the people. It is the deterrent character of the Act itself which will make these crimes rare.

Q. So far as the working of the Act is concerned, would you like it to be preventive rather than punitive?

A. The punitive is there, in a proper case it should be initiated. The law should take a much more lenient view. It may practically be said to connive at things which are happening. It should try to prevent them from happening again. There should be no harassment on any larger scale.

Q. What I was proposing was a half way house. As at present the girl and the parents will have an absolute right to make complaint, but along with that I wanted some agency on behalf of the State which could receive all complaints from all persons and sift them and then take action in proper cases.

A. Can you conceive of anything like that?

Q. Yes. Previous to the amendment of 1923 there was a law of sanctions in respect of which appeals were also provided. The court had the power to make a preliminary enquiry. Would you require that in these cases also sanction may be provided and only a few offenders picked up and punished?

A. Our object is not to unearth every crime that has possibly happened but to prevent it by stimulating public opinion. We won't agree to anything which is against our method of dealing with the crime. It is not the detection of every crime that is going to be helpful.

Q. You have said that in Gujrat sale of girls and early marriages are very common.

A. I think they are more common than perhaps among the Maharashtries.

Q. So far as early marriage is concerned even now consummation takes place at a very late date on account of the "Annu Ceremony". Is it not?

A. No, Annu ceremony is irrespective of age and even puberty. Consummation takes place early. There is no social opinion against it.

Q. But previous to this, say 20 or 30 years before, consummation did take place late in life.

A. I cannot say of 30 years back, but ever since I began to be interested in these things, I have found that there is a very substantial difference now and they are steadily improving. There are early marriages in Gujerat. I don't know how far it is true, there is supposed to be a custom amongst certain Pattadars of Gujrat of celebrating marriages every 12 years. On a single day all unmarried girls and boys of the community will be married and again for 12 years there will be no marriage at all. I don't know whether that practice obtains now, that it did exist there is ample evidence.

Chairman: That practice is now dying out. In the course of your answer to question No. 2 you say that in marital cases when fixing the age the health of the girl-wife and also of the progeny is the main consideration, but that it is not possible to ignore altogether the various religious and social customs of India. So that, according to you, 15 was the compromise age. Is it so?

A. Yes.

Q. In fixing the age at 15 the health of the girl was also not fully taken notice of. According to you this offence is against the person of the girl and therefore from that standpoint there is no reason why it should find place in another chapter.

A. Technically it may be.

Q. But you have said girls should be given as much protection as is possible under the law of the land in respect of offences against their person.

A. That is with regard to extra-marital cases. There are other considerations too. The whole thing is that the Corporation does not regard this as a crime. We have created it as a special crime in the interests of the health of the girl and in the interests of society and in the interests of posterity.

Q. Therefore technically is it not a crime against the person of the girl?

A. It is not a very vital point.

Q. As regards these ladies' associations, barring Bombay and perhaps some other towns, are there any such associations?

A. There are no such associations, that they are growing, there is no doubt.

Q. Before another 10 years these organizations will not be such to whom recognition may be granted by Government. Is it not?

A. Not in all cases.

Q. And you are of opinion that these ordinary social reform associations may be given power to make enquiries. Is that your considered opinion?

A. I said wherever there are no women's societies I will suggest some special societies for this purpose. If that materialises I won't be against it.

Q. But are there any societies in existence?

A. In Bombay and Ahmedabad and other big cities there may be, but in smaller towns there won't be.

Q. What is your idea about these societies, will they act as a sort of police?

A. They will act in an advisory capacity. We have limited the right of initiating proceedings only to guardians or the girl. We do not want these associations to take any initiative in that. But I think the women associations will be able to help the police in this matter of prosecution.

Q. In what way?

A. Either by enquiring themselves and reporting to the police or by coming forward to give evidence if they are in a position to do so. They should be very useful. I don't want them to be invested with any powers of launching prosecutions. They will only assist the police in investigation. A girl may herself sometimes not repose confidence in her legal guardian when she has no parents to act as her guardians, and under those circumstances she may come to this ladies' association. No definite scheme is possible at present but that there should be efforts in the direction of enlisting co-operation of women's associations in the investigation is the only thing that I would suggest.

Moulvi Muhammad Yakub: Don't you think that the amendment of 1925 which raised the age from 12 to 13 was very insufficient?

A. It was very meagre. It was a make-believe.

Q. And therefore it did not prove to be quite effective.

A. Public opinion was far in advance of the law.

Q. You think that if any change is to be made it ought to be a comprehensive and definite change, so that frequent amendments may not be required in the law.

A. Yes.

Q. You have said that the age for marital cases should be 15. What procedure would you like? What punishment would you suggest? If the girl is below 14, say, would you make any difference?

A. The punishment will be laid down which will vary from a fine of a few rupees to a several years' imprisonment. It will be left to the discretion of the court what punishment should be given when the girl is of a tender age or there are some such other circumstances.

Q. Would you approve of these cases being tried in camera? That would avoid all the scandal.

A. I would certainly object to these cases being made triable in camera. It is a kind of crime which at least has no moral taint in it. It is a kind of reckless neglect on the part of parents and I would like the father to be openly exposed and punished and I think a husband who cohabits with a wife of tender age deserves to be similarly exposed. There is no scandal in that sense of the term. A man ought to be ashamed by being exposed.

Q. Would you approve of the idea of punishing the parents of the parties if the boy is below 18 in the case of violation of the law? After all it is the parents of the bridegroom who create such circumstances. Would you therefore like that the parents should be punished as abettors under such circumstances?

A. They are not only the abettors of the crime, they are something more. They are the chief culprits. There is no need of special provisions, I think. The ordinary law in respect of abetment would apply in these cases also.

Q. In answer to question No. 18 you have said that cognizance should be taken only on the complaint of the girl-wife or of such persons as would have been her guardians if she were unmarried. Don't you think that by making this proposal you are making the law a dead letter. There is the danger of its being defied. Considering the present feelings of the people in India towards their sons-in-law no father or mother would take the courage to go to a court and file a suit against the husband and the girl would equally be unwilling to lodge a complaint.

A. I think that criticism is just. But look at the Act in operation to-day and you will find that it has also been a dead letter.

Q. And therefore we require some improvement.

A. And yet all admit it has been a beneficial measure.

Q. Very few cases come to court and it is for this reason that I say offences within the marital relations are not decreasing.

A. The point is that with the increase of age the number of cases that will come out will grow. When the age was 12 there was not the same incentive to consummate the marriage as there would now be.

Q. Do we not therefore want some strict and stringent laws?

A. We want that as the crime is likely to grow there should not be harassment growing side by side.

Q. What methods would you suggest therefore to bring such cases to light? In spite of the fact that you think that there is some likelihood of an increase in the number of cases, you still want to keep the law a dead letter.

A. It is because of it and not in spite of it.

Q. If you leave it to the girl or her guardians only to make a complaint is there any probability of such cases coming to court?

A. I agree that the probability is smaller.

Q. Therefore while the chances for offences will increase the chances for detection will remain the same.

A. I have therefore suggested women's associations. That is my personal view and not of the corporation.

Q. But that is not practical in all places.

A. That is true.

Q. Probably you know that there is a large volume of opinion in the country which thinks that legislation should not interfere with the domestic matters of the people in this country. Have you any regard for such opinion?

A. I don't agree. I am in favour of legislation wherever it helps in any direction.

Q. Which do you like, and which will be more effective, in your opinion, legislation on the lines of Sarda's Bill or raising the Age of Consent.

A. We would have both.

Q. Which of them would be more effective?

A. That is very difficult to say.

Q. If there are no marriages before a certain fixed age are not the chances of consummation much less?

A. It is true. But possibly the age limit of marriage on account of religious difficulties may not be raised to that extent as the Age of Consent could be raised.

Q. Will not the same difficulty arise in the case of raising the Age of Consent?

A. In the case of Age of Consent so far I have heard very little of "religion in danger". I have heard of difficulties but I have heard very little of "religion in danger". Even the very orthodox told us in Simla that they were willing to enact a law regulating the Age of Consent, but they said "allow us our religion in marrying our children". I don't think there is any important religious question in the matter of consummation of marriage.

Mr. Mudaliyar: The corporation would like to fix the age for marital cases at 15. That I take is the compromise age.

A. As a matter of fact the proposal was to fix it at 16 and if I am not doing any injustice, I will say, it was really defeated by the casting vote of the chairman. Opinion was divided. By a bare majority we decided 15.

Q. Was not 15 the unanimous opinion of the committee?

A. I don't remember it. I don't remember any substantial opposition to 15.

Q. You have said that social reform associations would not do in the matter of reporting of cases. May I know why you are of that opinion?

A. Because social reform associations mostly consist of men to-day. They are led by men and in this matter it is only ladies' associations that will gain the confidence of the girl.

Q. You are not referring to any internal or political differences.

A. No.

Q. You said that marriage law alone is not sufficient. May I understand that that is because in spite of marriage law that is going to be enacted in the form in which Mr. Sarda proposes there are bound to be some offenders, there are bound to be some breakages of the law, because the punishment is not deterrent enough and you want to cover that by the Age of Consent?

A. That would be a substantial reason.

Q. The marriageable age may not be fixed as high as the Age of Consent and you want to cover those cases.

A. One must supplement the other.

Q. You are against camera trials. Would the same objection hold in the case of rape?

A. That opens up a large question of jurisprudence. It is really a moral offence. It is moral turpitude.

Q. Would you suggest camera trial if such an offence is committed? Do you think that the law would be more effective in that way?

A. Possibly it would be more effective. But there are other considerations which outweigh those advantages, and besides it does not apply to all cases of rape. It is always open to the magistrate to choose cases which are to be tried in camera.

Q. Are you using the word "guardian" in the technical and legal sense of the word, or would you under this, extend the right of complaint to the relations of the girl also?

A. I am using it in the technical sense.

Q. Then even the brothers of the girl would not be in a position to report.

A. Unless they are properly the guardians of the girl.

Q. Suppose the girl has no father and has only the mother. The mother will really be the guardian in that case and the brothers will not be in a position to report and probably they will be the only persons that will feel it to be a crime. Is it not so?

A. If the family feels that it is a proper case to be reported the brothers will be able to persuade the mother to action. Our difficulty is that if you say "relations" it will extend indefinitely, the degree of relationship may be very very small and yet he will be a relation and it would not be possible to limit to near relations unless by a long catalogue.

Mrs. Nehru: You refer to women employed in factories and other occupations. Can you say at what age consummation takes place in the case of women in factories?

A. I won't be able to say definitely. Here in the second question we are referring to the increased chances of social intercourse between men and women. We said in this age when education is growing and when industrial life is more and more being organised, young women are more and more being exposed to the risks from strangers and we therefore thought that the age of consummation as against strangers should be raised to 18.

Q. Do many cases happen in factories where there is breach of this law?

A. I cannot say. I have heard of many cases having happened elsewhere. But it is common knowledge that in the mills and factories very often the girls are victimised. It is just in the same way as an employer may try to utilise his position against a typist.

Q. Under these conditions are women generally in a position to make a complaint?

A. I think when they get employment they do not do so with any such intentions. Therefore if they are victimised in this way they will certainly complain.

Q. But is their moral condition such that they will have the courage to go against their employer in the court?

A. Most of these girls are very well behaved. They are generally very bold and will even slap the employer in the face if some such thing happens.

Q. But are they in a position to utilise the law by making complaints in the courts?

A. They take the other action of slapping in the face which is far more serious and effective than going to court. These girls are, in my opinion, very courageous on the whole. They would certainly resent such sort of victimisation.

Q. You say the age of marriage is increasing beyond 13. Do you mean to say that that is the case in the country also. Is it increasing in villages also?

A. I think so. It is simultaneously growing with education. It is education alone which is slowly opening the minds of the people towards the dire necessity of increasing the age of marriage. In the villages the growth is slower. But there also the opinion is growing against early marriage. They are realizing that early marriage is not desirable and the cultured opinion slowly percolates in the villages and smaller towns also. If my servant finds that I celebrate the marriages of my daughters when they are of a big age he naturally carries that enlightenment to his district.

Q. When you suggest a graduated punishment from fine to imprisonment do you think that one of the forms of punishment could be the taking of bonds from the parents of the couple and the husband if he is over 18. To keep the girl and the boy separate till the girl has reached a fixed minimum age?

A. I have no objection to that.

Q. Will there be any difficulty in accommodating the girl away from the husband? Because if that sort of bond is made the girl will have to be in a separate house, either in her parents' house or in the house of some relation.

A. She can live under the same roof and yet not consummate the marriage.



Q. It would be very difficult to detect if they continue to live in the same house whether the offence is being repeated or not. What I am suggesting is to take bonds from the parents not to allow the girl and the boy to live in the same house or if the husband is grown up to keep himself away from the wife.

A. I am in favour of bond being taken from the husband if he is grown up preventing him from consummation before a particular age.

Q. But laying it as a condition to keep the girl separate from him till that age. If that condition is not made and if the couple is living in the same house how are we to detect that the offence is being repeated?

A. But then the bond is unnecessary if you order them to live separate.

Q. The bond is an undertaking from them that they will live separate.

A. I think both things were possible. After the first offence a bond can be taken that there will be no cohabitation till the wife is of a prescribed age. It is a step in the right direction. As an experimental measure it can be tried.

Q. Will there be any difficulty for finding a house for the girl?

A. Parents' house is the only shelter in a bond of that kind.

Q. Will there not be friends and relations to take charge of the girl if there are no parents?

A. The husband might object if there are no parents, and the difficulty would be to find shelter for the girl.

Q. But if this is laid down as a form of punishment the husband will have to agree to it whether he relishes it or not.

A. In that case, I think, it will rather be a hardship. If there are no parents there will be difficulty.

Q. Will it be more hard than sending the boy to prison?

A. But there is the intermediate course, you may fine him.

Q. If you fine the boys and keep them in the same circumstances the offence will be repeated. Is it not?

A. But can't the mother-in-law see that the bond is observed?

Q. In case she has no parents?

A. It will be hard.

Q. But in that she can be sent to some such association as the Seva Sadan or any school of that kind where the girl is well looked after till she becomes of the prescribed age.

A. I have no objection.

Dr. Beadon: In answer to question No. 12 you have spoken of bad effects of early maternity upon mothers and children. Is there any case within your personal knowledge where the girl's health has been damaged on account of early consummation?

A. I know of cases in Gujrat. I have experience of the deaths that have occurred during child-births.

Q. Girls of what age?

A. Girls of very tender age, between 14 and 15. Within two years of marriage their health suffers and they die. I can recollect within the last 6 years about a dozen cases where the girls were barely 15 and they died in child-birth and they are in some cases very well educated and very well behaved girls. This early marriage has practically killed many girls, it has become a regular process of immediate murder. I can produce a dozen cases at least.

Q. In these cases are the parents fairly well off? Or is it only the poor classes?

A. Well-to-do classes also, these bungalow and motor car owners also.

Q. There are no economic reasons.

A. No.

Q. Are these Hindus?

A. Yes, Gujrati Hindus.

Q. What about the children?

A. Children mostly die.

**Written Statement, dated the 13th August 1928, of Mrs. MANGAL-GAYRI CHUNILAL H. SETALVAD, Bombay.**

1. Not among the large majority of the masses, but certainly among the educated classes.

2. (i) A large majority of people would not like it especially the higher Age of Consent for marital cases.

(ii) The educated classes want the advance and it is good for the masses who require to be properly guided in such matters.

3. I think not. Better education of the masses and keen public opinion consequent upon it.

4. To very little extent—

(i) The consummation of marriage has been per force postponed to 13 years.

(ii) Public opinion has been stimulated but it is more due to the advance in education and consequent advance in social reform.

(iii) In few cases.

5. Between 12 and 14 years of age. This varies according to the habits of living and the circumstances under which they live. Girls of working classes generally attain it a little later. Those of sedentary habits and living in luxury attain it a little earlier. Those living in the country in open air generally attain puberty later while those living in cities attain it earlier. Much depends upon environments.

6. (1) No, very very rare.

(2) No.

(3) No, specially after the marital Age of Consent being made higher.

7. There is no religious injunction for early consummation of marriage before puberty. In many cases the early consummation of marriage soon after puberty is due because it is commonly supposed that religious injunction requires it. The religious injunction concerning this is contained in Manu Smriti which says that if a husband does not cohabit with his wife within five to eight days (or soon after) the wife getting the courses he commits the sin of child murder. This is based on the theory that a girl or woman generally conceives if she has connection within a few days of her getting the courses and abstaining from cohabitation during the period when conception is most likely to take place amounts to killing a child.

8. Yes. In few cases among the Gujaratis, but in a majority of cases among the Deccanics. It is usually performed after marriage (even though puberty may have been attained before marriage) and it is anterior to the consummation of marriage. It is performed after the attainment of puberty and after marriage. If the marriage takes place say 3 or 5 years after attaining puberty the ceremony is performed after marriage is performed.

9. No. But much depends upon the physical development of the girl, the heredity, environment and similar other circumstances. We know of many cases in which a girl has begun getting children from the age of 15 and she has given birth to a number of children all of whom are healthy and long lived and the girl herself has attained good old age. In cities on account of environments girls are weaker while in the country due to work and fresh air they are stronger. I think at 17 years a girl's physical development should be considered enough to justify wise consummation.

10. This also depends on the environments and the circumstances under which she is brought up, but I think 17 years would be the proper age.

11. Yes. In some cases when girls gave birth to children at the age of fourteen the children were deformed or began walking or speaking at a much later age than children usually do or the children got rickets and died in infancy and the mothers got consumption anæmia and such other diseases. I know of several, such instances.

12. Yes; as main contributory factors; though want of education, poverty, want of knowledge as to what care should be taken during pregnancy and after birth, absence of maternity and child welfare centres all throughout the country, are some of the other equally active contributory factors.

13. Yes; to some extent. The development is mainly due to the fact that people have come to know that cohabitation before a certain age is punishable. It is not general.

14. It all depends upon the environments in which they are brought up. The women of educated classes and those who have come in contact with them do not favour early consummation but it is not so as regards women of the uneducated classes. However it appears that on the whole the ideas of even uneducated classes have undergone a change, though a slow one, and they are gradually more inclined *against* early consummation.

15. Yes. In many cases the only evidence as to the age of the girl on which a Court has to depend is the expert evidence of the Police Surgeon in Bombay or the evidence of the Civil Surgeon in the Mofussil towns or of subordinate medical officers in the districts because the parents and relatives of the girl, in most cases being uneducated, are unable to give their exact ages and there is not quite thorough registration of births in the small villages of the mofussil districts. Even as regards expert medical opinions as to age there is sometimes a controversy and what with X-ray tests and ossification tests and other theories conscientious Courts sometimes experience real difficulty in determining ages of girls. The remedies I suggest are—(a) A better, stricter and more exact registration of births all over the country; (b) Laying down by Government, after consulting most eminent experts in this line, of simple standard rules and tests which regardless of costs or trouble every Medical Officer, before certifying the age of a girl should invariably and without exception apply and a notification of these rules and tests to various Courts. (c) Schools and other such institutions should require a strictly exact statement of the age of the girl at the time of admission.

16. Yes, to some extent. Though I believe in many cases it would be difficult for a medical expert to swear that a girl is fourteen and not thirteen.

17. Yes. As regards rape in non-marital cases, I would keep the punishment the same as in Schedule II of the Criminal Procedure Code. In marital cases, if the wife is below 11 years of age, I would prescribe the same punishment as in non-marital cases but in marital cases where the wife is between 11 and 13 (14) years of age I would prescribe a punishment of 7 years imprisonment of either description and fine, make it bailable and non-compoundable.

18. No, excepting that in marital cases the offences should be bailable while in the other cases they should be non-bailable. Marital cases should not be tried by any but First Class and Presidency Magistrates or Sessions Courts.

19. No. No further safe-guards would be of any avail unless the moral of the police and of the judiciary was of a high standard. I think subordinate officers of the Police should not be allowed to investigate marital cases. No officer below the rank of an Inspector should be allowed to investigate marital cases and no marital cases should be put up before a Magistrate without the Superintendent carefully going into it beforehand. Only First Class and

Presidency Magistrates and Sessions Courts should be allowed to take cognizance of them.

20. I think both should be done. It will be easier to pass legislation fixing a higher Age of Consent in marital cases than to pass legislation fixing a minimum age of marriage. But both measures should be undertaken as they are certain to act and react upon each other.

21. I would much rather prefer progress of social reform by means of education and social propaganda to secure the object in view than strengthening the penal law with all its attendant controversy and probable hardship if not worked in its proper spirit and with fairness. Social progress has made much more progress in India lately than many people believe or are aware of. Just consider the general and tremendous opposition to the fixing of Age of Consent in marital cases at 12 years many years ago, evoked in all classes of people—even among the educated, on the ground that Government was interfering with the religion and the social life of their subjects. Now there was no such widespread and strong opposition to the raising of the age to 13 and there would be no such opposition if it is raised to 14 or 15 years. Further if the minimum ages of marriages of girls and boys are fixed at 14 and 18 I am sure there would not be much opposition. This change in public opinion is undoubtedly due to the advance of social reform due to the spread of education. At the same time I believe till that social reform is in a transitory state penal laws must be adequately strengthened to secure the object in view.

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### Oral Evidence of Mrs. MANGALGAYRI CHUNILAL H. SETALYAD, Bombay.

(Bombay, 25th October 1928.)

(Vernacular.)

*Chairman:* Are you connected with any social reform movement?

A. I have acted in various capacities sometime ago in connection with these social reform institutions, but owing to my indifferent health I have severed my connection with these institutions at present.

Q. In the course of your answer to question No. 14 you say that there is a change in the outlook of women even in the case of those who are uneducated. Have you talked to them?

A. I have access to middle class ladies and I see that the change is coming on in their sentiment. This I say with regard to the latter part of the answer to question No. 14.

Q. Since how long have you noticed this change?

A. For the last 7 or 8 years this change is coming on. As education advances the idea of early marriage and consummation is disappearing.

Q. Are you in touch with village life?

A. I know village life and often have to go to villages. I used to be more in touch before but I am in touch with village life even now.

Q. You are of opinion that the age of marriage should be fixed at 14 for girls and 18 for boys, and for consummation 17 for marital cases and 23 for extra-marital cases.

A. Yes.

Q. Do you think that the public opinion will be in favour of it?

A. The uneducated would not resent it but would take it unwillingly. If they are educated up they would take it gladly. The uneducated require propaganda work to teach them that late consummation of marriage will do them good.

*Q.* In answer to question No. 17 you have suggested a punishment of 7 years between 12 and 13. Do you want an increase in punishment? The present punishment between 12 and 13 is two years.

*A.* Below 12 I want the same punishment as for non-marital cases. But after 12 the punishment should be lighter. It should be two years upto 17.

*Q.* There are two bills before the Legislature, one for the prevention of child marriages and the other for raising the Age of Consent. Which would you support?

*A.* I should like that the Age of Consent be increased to 17 but the age of marriage should be left at 14.

*Q.* The cases are not at present brought to light. It is very difficult to keep the girl and the boy separate. Which of the two measures, do you think, would be more useful then?

*A.* If the Age of Consent is increased the parents of the girl and the parents of the boy will probably obey the law. We will see that the boy and the girl are not brought together.

*Q.* There is a difference of two years between the Age of Consent and the age of marriage. Do you think that the law will not be broken during these two years?

*A.* I don't think so. Amongst the educated classes marriages take place even now at an advanced age. Among the Brahmin Kshatrya Community there are practically no child marriages. Marriages are performed generally after 16.

*Q.* What is the proportion of the educated and the uneducated women in the cities?

*A.* Amongst the males in the cities I would say that 40 per cent. are educated and out of these 20 per cent. are women. During the last 10 years there has been an increase in the education of boys and girls.

*Dr. Beadon:* In answer to question No. 9 you have spoken of girls beginning to get children at 15 and keeping good health.

*A.* I do know of some cases but they are few.

*Q.* In answer to question No. 11 you have said that you know of several cases where girls at the age of 14 have given birth to deformed children and the mothers suffer from consumption, etc. Can you give any instance?

*A.* I know of many such instances among the poor classes. Among the poor classes they suffer from want of nourishment and being of tender ages the girls do not know how to take care of their children.

*Q.* Are there any cases, which may have occurred during the last 3 or 4 years, that are within your personal knowledge?

*A.* I do not remember of such instances during the last 3 or 4 years.

*Mrs. Nehru:* In answer question No. 4 you have said that the law has been effective in almost all the three ways. Have you known of any cases in which consummation of marriage has been postponed owing to the existence of this law?

*A.* People who know the law do not send the girl before 13. Those who do not know there is a breach in their case. Apparently everybody knows that there is a law preventing consummation before 13. The uneducated know the law only a little.

*Q.* How do they come to know of the law?

*A.* There was a great deal of agitation when the law was being enacted and since the amendment of 1925 people have come to know that such a law has been in force. There was much agitation when the age was raised from 10 to 12 years. When the age was raised from 12 to 13 there was not much agitation and the people are generally coming to know what the law now is.

Q. In answer to question No. 13 you have said that development of public opinion is not general. In which classes is the development to be found?

A. Educated people. Even in villages the law is known to some extent and cases of breach of law, of cohabitation below 13 are rare.

Q. Are there any infringements of the law fixing the Age of Consent at 13?

A. No infringements take place within my knowledge.

Q. Are you in favour of bonds being taken from the parents of the girl, or the husband if he is over 18 to keep the girl and the boy separate till the girl has attained the prescribed age?

A. If such were the case the bonds would be forfeited and fines paid.

Q. The breaking of bonds may be treated as a second offence punishable with some penalty.

A. But who will disclose it. The girl or her parents would not disclose the matter.

Q. You mean neither the girl nor her parents would be interested in bringing offences to light. Would you like that right of complaint be given to social reform organizations?

A. Even if we have such societies the parents of the girl will not give any information. They would themselves complain if they are disposed to do so. They would not like any other person filing complaints about their own domestic affairs.

Mr. *Kadri*: You have said that there is great difficulty in determining the age of the girl. What remedies would you suggest?

A. At the time of enlistment of the girl in a school some definite evidence of the age should be required. The horoscope or an extract from the birth register should be called for.

Mr. *Kanhaiya Lal*: You have given the age of marriage among the Brahmins Kshatriyas. What is the general age of marriage among other classes of people?

A. Among the Nagars marriages do not take place at an early age both in villages and towns. Among the Vaishyas and other classes also the age is high if the people are educated. But even when they are not educated the age is generally between 12 and 13.

Q. Why are you recommending such a high age of 17 when your own experience has been that there have been healthy mothers at 15?

A. Such instances are very few, only one in a hundred.

Q. Suppose we fix the Age of Consent at 15 would it be safe for the girl and her progeny?

A. The progeny would not be as good as desirable. There is a danger of injury to the girl and the child.

Q. If we fix the age at 16.

A. One year will make no great difference. There is danger to the mother and the child. I think 17 is the safe age.

Q. Would it be acceptable to the people?

A. The educated will accept it.

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**Written Statement of Dr. J. N. KARANDE, M.D. (Bom.) and Mr. S. M. VARDE, LL.B., on behalf of Saraswat Brahman Samaj, Bombay.**

1. Yes. There is a great dissatisfaction among the literate classes as to the present law of the Age of Consent.

2. There can be no justification for retaining the present Age of Consent and an advance on the present law is universally advocated by all persons

who have given their attention to this subject. Even at the age of fourteen, a girl, though somewhat more developed in body and mind than a boy of the same age, is still a child. It is then a crime to impose upon her the possibility of motherhood; it has disastrous effects on the girl's health and the progeny produced at such a tender age is generally weak and deficient in physical and mental vigour.

3. In the Bombay Presidency the crime of rape is not very frequent except in some far districts. In the Goud Saraswat Brahmin Community to which our institution belongs, this sort of crime is almost unheard of.

The period since 1925 is too short to ascertain whether the amendment then made has been effective. It can however be safely said that the amendment of 1925 has been greatly deterrent in the case of brothels. The keeper of brothels have begun to realise that they take a great risk in employing immature girls for the purpose of their trade. A greater supervision of the places and resorts, where sexual commerce goes on, would be greatly effective in enforcing the law.

4. So far as the Goud Saraswat Brahmin Community is concerned the general minimum age limit at which girls are married is 15 years of age. Even in the Mofussil this limit will be generally found. It is mostly due to the custom of taking exorbitant dowries by the bridegroom and this cause has prevailed more in raising the age limit than any other cause like spread of education.

The amendment of 1925 has no doubt to a certain extent contributed in stimulating public opinion in that direction and this is the case among classes where marriage takes place at an early age.

5. Among the richer and well-to-do classes the average age of puberty is 14 years. Among the lower classes where girls are engaged in manual labour since childhood, the age of attaining puberty would be later by a year or two.

6. In Southern Maharashtra cohabitation before puberty is extremely rare but whenever the girl is married the consummation takes soon after puberty even if the girl has not completed her 13th year. Such cases do not come to Court.

7. As stated above the practice of early consummation of marriage before puberty is extremely rare. The consummation of marriage soon after puberty is enjoined by certain religious texts. So far as our knowledge goes, the practice is perhaps mostly based upon the belief that a girl becomes impure on attaining puberty and is unfit for taking part in religious ceremonies until she is purified by consummation. This belief is mostly based upon usage and custom. There is no penalty to our knowledge, ordained by law for not performing the consummation of marriage soon after puberty. Perhaps the only penalty lies in low public opinion for not having acted in accordance with the so-called religious law.

8. Yes, usually. The "Garbhadan" ceremony coincides with the consummation of marriage and in fact the word itself amounts to consummation of marriage. It is performed in the case of married girls only immediately after puberty. If the puberty has been reached before marriage, it would be performed with the first menstrual discharge after marriage. This ceremony is performed even in the lower classes and is called "Oat Bharan".

9. No, not at all. The girl should be at least 16 years of age before consummation if no injury to her health or that of her progeny is desired. The earliest age at which consummation may be justified without much injury to the health of the girl and her progeny is 16 years, i.e., two years after attaining puberty.

10. This is a question to which it would be difficult to give a reply. No uneducated girl can be supposed to give an intelligent consent to cohabitation nor can she realise the consequences. At the most a girl who has attained 18 years of age may be supposed to have become so far acquainted with the relations of sexes as to express her willingness or reluctance to have cohabitation with some idea of consequences.

11. We have some knowledge of cases of cohabitation after puberty but before full physical development. In one case the girl attained puberty at 12 and conceived before 13. The delivery was fatal and the child though born alive died in a few hours. There are also several cases known of girls who became mothers at 14 or 15 and began to suffer from tuberculosis diseases soon after or became anæmic and died at a very early age. During the last 15 to 20 years the marriageable age of girls in our community has arisen as already stated still in some appreciable cases, though few, where a girl attains motherhood at 17 or 18 the effect of such motherhood are seen to tell upon her health. It must however be mentioned that the majority of such cases are found among persons living a city life and there is reason to suppose therefore that the evil effects of motherhood at 17 or 18 are not solely due to motherhood but may be partly caused by environments.

12. It is really too late in the day to deny the fact that high maternal and infantile mortality prevalent in India as well as the low physique and vigour of the people is greatly due to the habit of early consummation and early maternity.

13. There is some further development of public opinion in favour of extending the Age of Consent since the amendment of 1925; but it is mostly confined to literate people. This opinion has to a very small extent been reflected among illiterate people also.

14. In our community during the last two decades the notion favouring early consummation of marriage have mostly disappeared even from among the women. The age limit also for marriage has been extended and cases where the girl is weak or undeveloped mothers and elderly women are very reluctant to send them to live with their husbands. However among certain castes mostly illiterate early consummation is considered to be necessary and reputable and sometimes it may be found that elderly women resort to religious vows or other divine intercession and in a few cases even to medicines with a view to induce early puberty. This is particularly the case where natural puberty does not occur till 15 or 16 or where motherhood is delayed beyond say, 18. This also shows that consummation before puberty is neither sanctioned by religious nor by public opinion.

15. Difficulties in determining the age in connection with penal sexual offences are experienced mostly in cases of sexual connection outside marriage. In such cases the male offender often urges that the appearance of the girl induced him to believe that she had reached the Age of Consent. It is generally held by Courts—and rightly held, that if such belief be proved to be wrong the offender, having taken risk, ought to suffer for it. We would suggest that the burden of proof as to the girl having reached the Age of Consent should lie upon the accused instead of its being thrown on the prosecution as is done under the present Law of Evidence.

16. As the Age of Consent is raised the margin of error would be minimised. This would result partly from the fact of the physical development of the girl and partly from her ability to know the consequences; further when the age is raised, the evil consequences of any error will be reduced.

17. Under the present condition of the Society the penalty with regard to the extra-marital connection should be different. This difference should operate in favour of the husband as the temptation to the husband is greater having regard to his rights and opportunities of association with the wife. Moreover punishment meted to the husband falls to a great extent on the wife and the families of both the parties. The punishment for the husband should be up to two years or fine or both. In cases, extra-marital, there should be no option of fine and the punishment should extend to seven years.

18. In cases of sexual offences the trial should be in Camera as far as possible. The evidence of the female should always be taken in Camera and the Magistrate or Judge presiding at the trial should prevent grosser features of the offence being made public.



19. Safeguards against collusion are almost impracticable; if however deliberate concealment of the offence is made punishable by itself it may be effective to some extent in bringing offences to light. To prevent improper prosecution or extortion marriages should be registered in all cases and declaration of the age of the parties should be made necessary. Such declaration should be taken as conclusive evidence of age. The declaration should be on oath, so as to make false declaration an offence. Registration of marriages of Hindus is not provided for in the British territory but in the adjacent Portuguese Territory such registration even among Hindus is prescribed by law and marriage without registration is made punishable. It is found there that even the low illiterate classes have full knowledge of this law and conform to it.

20. Legislation fixing a higher age of marriage will be more effective and will be more in consonance with public opinion.

21. Progress of social reform by means of education and social propaganda is too slow to meet the pressing needs of the time in this matter. Strengthening of the penal law is therefore more advisable to secure the object in view.

The above replies to the questionnaire have been given with a view to the general condition of the Deccani Maratha Society of all castes wherever peculiar conditions of the Gond Saraswat Brahmin Community to which this institution belongs differ from such general conditions we have stated the same as pertaining to our community.

**Oral Evidence of Dr. J. N. KARANDE, M.D., on behalf of the Saraswat Brahman Samaj, Girgaon, Bombay, with Mr. S. M. VARDE, LL.B., who joined later.**

*(Bombay, 25th October 1928.)*

*Chairman:* How long has the Samaj been existence?

*A.* For the last 35 years.

*Q.* Are you in Government service?

*A.* I am a doctor. I am a honorary physician in the Motlibai Hospital.

*Q.* May I know the membership of the Saraswat Brahman Samaj?

*A.* I don't know the exact membership. Approximately, it is over 400.

*Q.* May we take the statement that you have given as the exposition of the views of the Samaj or your own?

*A.* They are the views of the Samaj because when we drafted this reply, we had a meeting with some of the influential gentlemen of our community.

*Q.* You have said only of the Managing Committee.

*A.* We included also other members. So, this opinion may be taken as the considered opinion of our community.

*Q.* In your answer to question 6, you have said consummation takes place soon after puberty even if the girl has not completed her 13th year.

*A.* That does not hold good as far as our community is concerned.

*Q.* Are you talking about Southern Maharashtra?

*A.* Yes.

*Q.* Does it not take place amongst the Saraswat Brahmins?

*A.* It is a general rule. It is not about our community. Generally the marriageable age amongst our girls is 15. Now-a-days, we don't marry our girls before 15.

*Q.* I took your answer to question 6 as relating to everybody.

*A.* No: It was not so.

Q. How could you say that your answer to question 6 does not apply to Saraswat Community?

A. There may be a few exceptions but it applies to other communities.

Q. Does it apply to Dakshini Brahmans who are not Saraswat Brahmans?

A. I don't think so. As for the Brahman Community they are sufficiently educated now and their consummation marriage before 13 is very rare.

Q. Then in what community does it take place and which are those?

A. Knnbis and Marathas.

Q. Why don't such cases come to Court? What is the reason?

A. In such matters the complainant is the girl or her parents and naturally the parents abhor going to Courts because they do not want it to be exposed and that is the main reason.

Q. Do you think this law is known about?

A. I don't think it is known amongst the uneducated people.

Q. Supposing the law is made widely known, do you think that more cases will come to Court or the original motive of the girl's parents not wanting to expose it would still remain?

A. Yes: It will still remain. I don't think that by mere publicity, it will be possible. According to Hindu law, marriage is a life-long thing. It is a contract which cannot be broken. So naturally if the husband is punished, indirectly the punishment goes to the wife. It is for this reason, they don't want to bring these cases into Court.

Q. Supposing the punishment is reduced by taking a security bond for separating the girl and the husband do you think that will induce the parents to come to Court?

A. I should think that by doing so, the parents will be made aware of their rights as far as their daughter is concerned. Many parents do not know that they have got a certain right over their daughters after marriage. They think that once she is married, the husband is allowed to do anything he likes. But after making this rule and making this law public and made known to all the people, they may take advantage of this new law.

Q. What is the age that you would have if we have a marriage legislation penalizing marriages?

A. Sixteen should be the age of marriage for girls. No marriage should be performed before 16. It would be better to have a law for the maximum age of marriage at which age the girl will marry. That would prevent further trouble of consummation.

Q. Then in that case, the law of consent will not be required.

A. If 16 is to be marriageable age, the law of consent needn't come in.

Q. Supposing there is no law for the age of marriage and we are not able to pass it, then would you have a law raising the age of consent to 16? Do you think it will prevent consummation and early mortality?

A. It may prevent consummation amongst the educated classes.

Q. What steps would you suggest for making this law effective? Supposing there is only the law of the age consent raised up to 16, as you suggest?

A. The first thing is that each marriage should be registered. Registration of births should be strictly followed and declaration of the age of the parties should be made necessary and made on oath before a Magistrate. To know that their ages are correctly reported a reference can be made to the Birth Register.

Q. What is the system of registration of marriages in the Portuguese Territory to which you have made a reference?

A. There no marriage is valid unless it is registered and a marriage without registration is made punishable. Before a marriage takes place, both the parties, viz., the husband and the wife, have to go to an official

and make a declaration on oath about their ages and give several other particulars.

Q. Do they get a license for that to the effect that they can be married?

A. No.

Q. Now, if we keep our register of births far more accurately don't you think that by itself it would serve the purpose?

A. Yes.

Q. Then do you want a marriage register even if the birth certificates are pucca and accurate?

A. Yes. I want. I want the factum of the marriage also to be proved.

Mr. Kanhaiya Lal: You describe yourself as belonging to the Goud Saraswat Brahman Community?

A. Yes.

Q. Would you like to have vigilance societies and panchayats or otherwise make it cognizable?

A. No. I would not like to make it cognizable.

Q. Would you leave the right of complaint to the girl and her parents or extend it to Social Reform Associations or other bodies?

A. It may be left to other bodies also.

Q. Would you like to make the marital offence cognizable or non-agencies to help the detection of these crimes both in towns and rural areas? Would the agencies be much more effective in rural areas?

A. In the towns the percentage of educated people being higher, such offences will be very rare. I think there is a necessity for vigilance societies and panchayats for preventing the breach of the law in villages.

Q. Will the registration of marriages and the proper record of births help to make the law sufficiently effective?

A. Yes. Every marriage will have to be registered. Then there will be no difficulty.

[Here Mr. Varde joins and says that the number of members in our Samaj is about 350.]

Q. Does your committee want to have a record of all marriages?

A. We cannot say whether it is the opinion of our Samaj. But it is the opinion of both of us.

Q. What is the advantage of attaching this condition to the law namely that they should be invalid if they are not reported?

A. This would compel the people to get the marriages registered.

Q. Supposing a marriage takes place and no report is made within ten days or one week then the man should be liable to such and such penalty, will that not be sufficient?

A. A fine may serve the purpose.

Q. In a marital case should the offence be compoundable irrespective of the age of the girl in order that good relations might be restored between the husband and the wife?

A. So far as we think personally, it should be compoundable with the permission of the Magistrate.

Mr. Kadri: Is your membership of the Samaj confined only to Bombay or to the neighbouring mufussils?

A. To any person of the Goud Saraswat Community who lives anywhere.

Q. May I know what is the reason for your saying that the minimum age at which your girls are married is 15? Is marriage done at the age of 15 amongst Marathas and Bhandaris or is it only among the Goud Saraswat Brahmans?

A. It is only amongst the Goud Saraswat Brahmins and I have given that one of the reasons for this age limit is the demand of exorbitant dowry which the parents cannot afford unless the girl is rather silver-coated. Not only that, the husbands want the girls to be educated also. They want both education and money.

Q. So far as the non-Brahmins are concerned, what is the age at which their girls are married?

A. So far as my personal experience goes, I think it will be about 13.

Q. Does consummation take place before she is 13?

A. I have no knowledge of any such consummation. They also have got a certain ceremony called "Oat Bharan" corresponding to "Garbhadhan". "Oat Bharan" ceremony is performed after puberty.

Q. Do you think that in many cases there are no consummations before 13?

A. There must be very few, but they don't come to light.

Q. Do you think that because of the punishment being deterrent or because of the publicity of proceedings that people don't come to Court?

A. Yes. It is due to the fear of punishment.

Q. Do you think that people generally know that the age is raised to 13?

A. So far as I have come across cases, even the Mahars know that some years ago the Age of Consent was 12. So far as the age is increased to 13, it is not known.

Q. Where are you practising?

A. I am practising in Bombay.

Q. There is a suggestion that if Matrimonial courts are established to try the marital cases people would be willing to come forward more readily, the Judge might be assisted by assessors belonging to the same community as the parties.

A. Any publication of the proceedings is always disliked by the people.

Q. If cases are heard in camera, will there be many coming?

A. There will be very few cases.

Q. It was suggested that in order to provide a further safeguard against frivolous complaints, we might create an institution something like the Directorate of Public Prosecutions. Do you think that such an institution would serve the purpose? Do you think that any enquiry by police would be proper before the papers go to the Director of Public Prosecutions?

A. I think it is quite unavoidable, because the Police alone are acquainted with the task of making enquiries.

Q. In marital cases you said that the people are averse to publicity and don't you think that investigation by the police is doubly worse?

A. It is because the police harass the people. In marital cases my view is that many cases will never come before the Court and only cases of proved maternity or cases of proved physical injury will come before the Court.

Q. So in this case, only two things will have to be proved—maternity and age. How could this be done?

A. This could be done by taking evidence. I am in favour of an officer being appointed to investigate into all the evidence and if he finds it is a proper case, then he can report it to the Court.

Q. May I know the population of your community in this Presidency?

A. In Bombay it is about 12,20,000.

Q. Do many of the people live in villages?

A. Yes.

Q. Is the marriageable age 15 in villages?

A. Yes.

Q. Was there any conference in your community regarding this age?

A. Yes: There was a conference in 1909 when I believe it was fixed at 14 as the minimum age of marriage.

Q. Subsequent to that, was there any conference?

A. Yes. There have been conferences up to 1916 but this question was never discussed.

Q. So far as the compounding of cases are concerned what do you suggest?

A. I think discretion may be left to the Magistrate.

Q. Would you prefer camera trials as regards extra-marital cases?

A. Yes. In all cases.

*Maulvi Mahomed Yakub*: You have referred in your statement to the law in the Portuguese Territory. I want to know exactly what law is there about marriage registration?

A. So far as I know, no marriage can take place unless it is registered. In fact if it comes to the notice of the Court that a certain marriage was performed without its being entered in the marriage register, the Court does not recognise such marriage as valid.

Q. Can you tell us when was this law enacted in the Portuguese Territory?

A. I don't know that.

Q. Does it apply to Hindus and Mahomedans?

A. It applies to all the subjects of the Portuguese Territory.

Q. Is there any complaint about this law that it interferes with the religion of the Hindus and Mahomedans?

A. I have made enquiries and I find no complaint about this law.

Q. When did you make these enquiries?

A. It was in the year 1918.

Q. Are you not assuming that there is a law for fixing the age of marriage?

A. Yes.

Q. If that bill is passed of course then registration would be useful, but if there is no such law how will it help?

A. I don't think it will help.

Q. Do you think that in a vast country like India this compulsory registration can be practical especially in the interior of small villages?

A. So far as the Portuguese Territory is concerned it has got all the conditions; it has been divided into separate districts and there the law is made compulsory. So far as the Government in India are able to enact laws and enforce them on other matters, I don't think it will be difficult to enact a law for making compulsory registration practical.

*Mr. Bhargava*: Would you give the authority to register, to special officers appointed for that purpose or even to the village patils who keep birth registers? Do you think that if the registration authority is given to patils or headmen of the villages, the registrations will be accurate?

A. Yes. The authority to register can also be given to village patils or headmen and the registration will be accurate.

Q. Don't you think that even the registration of births when it is given to village patils, is most inaccurate?

A. So far as the cases come to Court, I don't think that it is so.

Q. How can you say that the registration is correct?

A. Birth certificates are tendered in evidence and they are not challenged.

Q. Upon whom would the duty of reporting the marriage rest?

A. Upon the parents and guardians of both the bride and bridegroom. Both of them must go to the village patil and have the marriage registered.

Q. Do you think that you could legally hold them liable for failure to do this?

A. Yes. Both of them can be legally held liable.

Mr. Mitra: In your answer No. 7, you say that the consummation of marriage soon after puberty is enjoined by certain religious texts. Can you refer to the texts themselves?

A. I don't try to investigate into that because people do not care more for the texts than for the custom. Their belief is that a girl is purified by consummation.

Q. I understand there is registration of marriages in the adjoining Portuguese Territory. Are there marriage laws also fixing the minimum age for marriage?

A. That I don't know.

Q. Is there any act about consummation or the age of consent?

A. That also I do not know.

Q. As regards the marriage law, what is the nature of punishment you would like to have for infringement of the law? Should it be confined to fine only or imprisonment also?

A. My personal opinion is that there should be some sort of simple imprisonment. But we have considered this question in our Pleaders' Association and there the majority is for a simple fine. The committee had made a report that there should be both, and the General Body came to the conclusion that there should be only fine.

Mr. Mudaliar: Mr. Warde; you say that taking of exorbitant dowries is one of the causes for raising the age limit in your community. Do you mean to say that because the people are not able to pay exorbitant dowries, the girls are perforce to wait for marriages? Does not the same difficulty arise even if they wait?

A. You would however find that more in our community at least; but the unpleasant thing is postponed as far as possible.

Q. Do you mean to say that there are perpetual maids?

A. There are a very few such maids.

Q. You say in reply to question 10, that no uneducated girl can be supposed to give an intelligent consent nor can she realize the consequences. Do you think that education is something closely connected with this?

A. Yes. I think it develops the mind sufficiently.

Q. Taking a normal Hindu girl do you think that she will not realize the consequences unless she is given education?

A. I think so.

Q. What sort of education do you require for them?

A. Of course, if there is some education about these questions, that will be better but even the present education sufficiently develops her mind to make her know her own responsibility.

Q. Don't you think whether she is educated or uneducated, she would realize the consequences provided she has a sense of chastity?

A. Of course. But other causes also may intervene.

Q. You suggest that the burden of proof of age should be on the accused in an extra-marital case. How do you expect him to prove the age. Do you expect him to refer to the registration of births? Do you think it is possible?

A. I think if the birth registration is made necessary and if the Courts strictly enforce this, it would be possible.

Q. With reference to the registration of marriages, what is the non-Christian population in the Portuguese Territory?

A. Equally half and half.

Mrs. Nehru : Have you got any experience in villages?

A. Yes. I myself come from a village and every year I am visiting.

Q. What is the marriageable age limit in the village?

A. In my community, I would put it at 15.

Q. Why it has increased?

A. There are many different causes for that. Among the literate classes there is a tendency to get the girls educated. The husbands also want it.

Q. I want to know in connection with the villages.

A. Amongst the higher communities the boys are educated. They want the girls at least to have some acquaintance with education who can read and write and understand something. Among the lower classes, they mostly follow the higher classes in their habits and customs. The odium which was there about 20 years ago that a girl gets grown up without being married, has disappeared now. The people do not mind it now. In no community it is considered to be a disgrace for a girl to remain unmarried after 12 or 13 as was the case before.

Q. What is the state of education amongst the women in villages as well as in your community?

A. Generally in my community the girls know to read and write their vernaculars.

Q. And what will be the percentage of educated girls in the villages?

A. In villages also there are schools; if not in one village, the neighbouring village usually has got a school. Sometimes the parents themselves teach the girls and you will not find more than 15 per cent. of uneducated girls.

Q. More than that they are not taught.

A. So much, so far as secondary education is concerned. So far as higher education is concerned, the percentage of the girls who have got that education would be much below 15 per cent.

Q. When you say that the amendment of 1925 has been effective to a certain extent in stimulating public opinion to advance the age of marriage, do you have any instance in mind where the age of consummation or the age of marriage was postponed on account of the law?

A. No; it is only by the agitation in the papers and in meetings and the discussions amongst people that public opinion has been educated.

Q. In your community is Brahmacharya amongst women looked upon as piety?

A. No.

Q. I have seen women Sadhus.

A. They are mostly amongst the Jains.

Q. Are not widows in your community respected?

A. Widows are respected.

Q. What for?

A. If they are pure and lead a chaste life they are respected by relatives and other people.

Q. Is not it due to the fact that they are Brahmacharinis that respect is paid to them?

A. I do not find that widows are specially respected because they are Brahmacharinis. No particular piety is attached to them because of that.

Q. Is this idea that a girl is impure if she is not married before puberty losing ground?

A. That idea is only so far as religious ceremonies are concerned. Otherwise there is no objection to her remaining unmarried even after puberty.

Q. Do you mean to say that the girl cannot take part in religious ceremonies?

A. Yes; but in Bombay it is not so. Here nobody cares. Generally these girls are not allowed to prepare food to the Gods on religious occasions.

Q. Can the food be prepared by Brahmacharini widows?

A. Yes; but not by girls who have not been consummated after puberty. That idea prevails only in certain families.

Q. What kinds of religious ceremonies are they besides the one you have mentioned?

A. It is not confined to any particular ceremony, but in all sacred rites which are performed, the girls cannot take part in the worship, Navaratri for instance.

Q. Is there any authority for it?

A. No; it is only custom.

Q. In paragraph 14 you say that amongst certain castes early consummation is considered to be necessary. Which castes are they who consider it necessary?

A. I find that it is so among the Kunbis in the Ratnagiri district. If a girl does not attain puberty before a certain age they make vows to the Gods and sometimes even medicines are resorted to.

Q. Is it on account of religious beliefs that they consider it necessary?

A. No; they simply desire to have children as soon as possible. This is particularly the case where natural puberty does not occur till 15 or 16 or where motherhood is delayed beyond say, 18.

Q. When you provide for punishment in marital cases for two years, do you mean it for ages below 12 also?

A. No; below 12 it should be more. I mean it for 12 to 16.

Q. You say in paragraph 19 of your statement that the concealment of the offence should be made punishable. What means would you suggest for making concealment punishable? Would you explain it a little further?

A. I mean that the concealment of the offence by the parents or any other person whose duty it is to watch over the interests of the girl should be made punishable.

Q. How do you know that in any particular case there has been concealment. What machinery would you propose for reporting the concealment of cases?

A. It would be difficult to provide machinery for that. But you must take means to penalise concealment unless you make the offence cognisable.

Q. But you have said that the offence should be made non-cognisable.

A. I said it may be investigated by the police. It should be cognisable on the complaint of certain associations, the parents or any other persons who may give information about it, and then investigation might take place.

Q. Do you think any means can be devised for bringing to light concealment of this offence?

A. No.

Q. What is the use then of trying to make concealment punishable?

A. It would act as a deterrent.

Q. Even if no means are provided to bring it into force?

A. If it is found that concealment itself is punishable.

Q. Nobody would divulge the secret.

A. Whenever offences take place people are under the impression that the offences would be concealed but they come to light all the same.



*Dr. J. N. Karande.*

*Dr. Beadon:* What is the total number of cases of primiparae?

*A.* Twenty-eight this year and 20 last year on the whole 48.

*Q.* Out of how many confinement cases is it 48?

*A.* Usually the average number per year is 220 to 240. Therefore about 10 per cent. is primiparae.

*Q.* There are very few cases of a lower age.

*A.* The minimum age in these cases is 15 and the maximum 27. The average is 19'6.

*Q.* You work in the Motlibhai Hospital?

*A.* Yes.

*Q.* What would be the lowest age of the girls who came there?

*A.* Fourteen was the lowest. I am sure I could not find many cases below 15. They are not many considering that the patients who come there are from the lower classes.

*Q.* In paragraph 11 you say that in one case a girl attained puberty at 12 and conceived. Was that recently?

*A.* It was 7 years ago.

*Q.* Have you seen any other cases of young mothers like that?

*A.* I do not think I have seen many young mothers. The average age of primiparae is not less than 15.

*Q.* Do you think that doctors working in private get such cases?

*A.* I think 15 is the lowest age in almost all cases.

*Q.* In the case of mothers at 15, do you find any special difficulty in the labour?

*A.* As far as the labour itself is concerned, there is not much difficulty. But it is the after effects of the labour on the mother that are very bad.

*Q.* How do you mean?

*A.* The body being undeveloped and unprepared to bear motherhood the mother suffers more than the child.

*Q.* Is lactation sufficiently carried out in mothers at 15?

*A.* It is a drain. They have not enough.

*Q.* Have you found that these cases of early mothers generally require a stitching of the perineum?

*A.* I found that the perineum has to be very often stitched in elderly primiparae because the tissues get more fibrous as the women get more old. In the elderly primiparae there is greater trouble and prolonged labour. Even the weight of the baby in the elderly primiparae is not favourable. The weight of the children in the case of primiparae at 15 is not appreciably low. Sometimes even in the case of the elderly primiparae the weight is the same.

*Q.* Do you then think that as far as labour is concerned there is no trouble with these young mothers at 15?

*A.* As far as the labour is concerned there is no trouble. But the after effects of labour are bad.

*Q.* Is osteomalacia common here in Bombay?

*A.* Such cases are very few in Bombay. We do get cases, but they are not many.

*Q.* Do you find that young mothers suffer from anaemia? Do you find that it is common in mothers who have had haemorrhage after confinement?

*A.* I do not find it particularly in young mothers. In the case of anaemia the age does not count. I have found cases of anaemia in elderly mothers of 24 or 25.

*Q.* How many children had they within that age?

A. One had a third childbirth.

Q. Do you find that tuberculosis is one of the after effects of labour?

A. Yes; in my outdoor cases I find that the percentage of anæmia and tuberculosis is much more in older mothers than in younger mothers. The labour itself is not really troublesome, but the after effects of labour are very serious.

Q. How long after labour do they get tuberculosis or anæmia?

A. The time varies from six months to one year.

Q. What would be the financial position of these people?

A. They are always poor people. Sometimes custom also comes in their way. For instance Purdah amongst Muhammadans is responsible for these diseases.

Q. What percentage of the cases that come to you would be cases of tuberculosis?

A. Whenever I get general cases, I first exclude cases of tuberculosis. I would say that nearly 15 per cent. are cases of tuberculosis.

Q. Are all the cases that come to you maternity cases?

A. In outdoor work I get general cases; indoors I get maternity cases.

Q. Out of these 15 women how many have had delivery?

A. To-day I had 6 cases. One of them had no delivery. 5 of them had delivered.

Q. Was it first child or second child?

A. One of them had a first child. She had tuberculosis. She was a Bohra woman.

Q. So that really the women who suffer mostly on account of motherhood are not young women but women of the Bohra community.

A. Labour in young women leaves them in a de-vitalised condition and they fall a prey to tuberculosis.

**Written Statement, dated the 13th August 1928, of Mr. D. GIRDHAR-LAL, Assistant Traffic Superintendent, B., B. and C. I. Railway, Bombay.**

Before replying to the questions asked seriatim I might mention that there is a general feeling amongst the women folk, specially of cities and big towns to raise the marriageable age of girls, and thereby necessarily increase the age of consent. Meetings of ladies have been held at various places and resolutions passed to that effect. In the Communal Conferences of one of which I have the honour to be a Secretary, Resolutions have also been passed urging the communities to raise the marriageable age of boys and girls. In fact men who have interested themselves in such movements in towns or even in villages have not only advocated these ideas but have put them into practice. The rise in the marriageable age is an indication of the tendency to raise the age of consent. The Baroda State to which I have the honour to belong, and which is one of the progressive states in India has considered this question very carefully by the appointment of a Committee, and acting on its recommendations, has decided to raise the age of consent to 14 years in the case of married girls and to 18 when not married.

With these general remarks, I now proceed to reply to the questions as under:—

1. No, except in cases of villages, where boys and girls are married at earlier ages and the girls are brought to the father-in-law's house, as a help in the conduct of the domestic affairs. There are some castes in which marriages have to be performed on a fixed day simultaneously, irrespective

of age; the boys and girls then come into contact at an age earlier than necessary and the law of the age of consent in such cases is violated. Enforcement of law then causes dissatisfaction which generally is shared in by others in sympathy with the sufferers.

2. Except for the reasons mentioned above, where the law as it stands at present has to be ignored for circumstances beyond the control of the men concerned, there is no reason why it should not be advanced, but it would be preferable as a prelude to the general rule, to raise the age in cases of outside marriage and give a chance to the people to raise it by option in cases of marriages as they advance in education and social reform.

3. This is a question hard to answer. Such cases are seldom reported and non-observance of the law is respected as a matter of fact by hiding the facts and not by publishing them with a view to the self respect of the boys or girls or their parents being maintained. Proceedings in law courts in such cases are also lengthy and not conducive to morality. An appeal to the good sense of the people can only make the law more effective than any criminal proceedings in which the facts of the case as reported may or may not be proved, according to the evidence available in each case.

4. By stimulating public opinion in that direction so far as has been known.

5. Fourteen on an average but sometimes it is earlier. It all depends on the constitution of the girl and the climatic conditions, the nature of food and the surroundings she lives in.

6. (1) Yes, (2) in cases of Maharashtra Brahmins and most orthodox people "puberty" must precede cohabitation. (3) Possibly in cases mentioned against question No. 1. They have not been heard as coming to Court.

7. It is the circumstances that prevail in such cases and not religion, though one of the Rishis has enjoined that marriage must be performed before the age of 12 years to save the parents from the sin of "Brahma Hatya" and this is held in authority by the orthodox Hindu people.

8. "Gaona" ceremony is not common in Guzerat where the girl is sent to the father-in-law's house for the consummation of marriage or for marital rites at a time to be fixed by the parties.

9. Yes; except in special cases of weak girls where development of the body is desirable, but as it would be difficult to legislate for special cases the attainment of puberty may be laid down as a test for the commencement of physical maturity to justify the consummation of marriage.

10. Not before 16 at least, I should say.

11. Not one but many. It is difficult to give instances, but to look to concrete cases, we might turn to second marriages of elderly men with young girls of say 12 or 13, where the consummation of marriage takes place as soon after the marriage as possible and the health of the girl and her children there is sufficient to prove what is required in this clause.

12. Partly. There are other causes also which are responsible for high maternity and infant mortality, etc.

13. Yes, but it is confined to rather advanced classes as stated above.

14. Not as a rule.

15. No, horoscopes that are generally maintained in Hindu families, School records, etc., and the appearance of the girl should determine the age. Medical examination is not suggested.

16. I do not think so; difference of a year or so would not be easily noticeable. Documentary evidence should be the sole guide as far as possible.

17. Yes. Higher punishment should be imposed for extra-marital offences or in other words such offences should receive double the punishment provided for marital cases.

18. This is a matter for lawyers to decide.

19. Enquiry and prosecution if necessary in closed doors is suggested.

20. I would strongly advocate fixing the minimum age of marriage, which will be a solution to this difficult problem, and would be welcome by all concerned.

21. Education and social propaganda are the best, and would be very much preferable to strengthening the penal law.

**Oral Evidence of Mr. D. GIRDHARLAL, Assistant Traffic Superintendent, B., B. and C. I. Railway, Church Gate Street, Bombay.**

*(Bombay, the 25th October 1928.)*

*Chairman:* How long have you been Assistant Traffic Superintendent in the Bombay, Baroda and Central India Railway?

A. Four years.

Q. How long have you been in Bombay?

A. Two years only.

Q. Then to what places do the facts that you have given in your memorandum belong?

A. To the Baroda State to which I belong and to Gujarat. I was in Ajmer for 21 years and I know more of Ajmer-Merwara.

Q. Can you tell us what the marriageable age amongst the Marwaris is?

A. It depends upon the castes. The Banias marry earlier. In the villages the marriages take place still earlier. There are very few advanced classes amongst the Marwaris. The Marwaris are spread all over the country and marriages amongst them are celebrated when they go to their homes once in a year. So as many marriages as possible are celebrated at one and the same time. There is therefore no hard and fast rule about it; but most people have early marriages.

Q. At what age do the marriages generally take place?

A. Ten to 12.

Q. Do you think that above 14 marriages would be uncommon?

A. Yes.

Q. What is the age of puberty?

A. It is less than 14.

Q. Have you reason to believe that amongst the Marwaris there is consummation of marriage below the statutory age of 13?

A. It is difficult to find out cases like that. It means a house to house search.

Q. Do you think that amongst the Marwaris there is cohabitation soon after puberty?

A. Girls go to their father-in-law's houses immediately after marriage, but then it is difficult to say whether there is consummation or not.

Q. Is any ceremony observed when the girls are sent to their father-in-law's house?

A. Yes; The Gaona ceremony.

Q. Does that ceremony take place after puberty?

A. Not necessarily. It depends upon the conditions sometimes.

Q. Have you seen mothers below 13?

A. No. I have seen mothers between 14 and 16.

Q. You advocate the fixing of a minimum age for marriage for girls. What is the age you would fix?

A. Fourteen.

Q. And what age would you fix for boys?

A. Sixteen to 18.

Q. Would you also advise that the age of consent should be raised from 13 onwards?

A. If you fix the age of marriage at 14 the age of consent would have to be increased. The minimum can be fixed at 16.

Q. I understand that you are for fixing the age at 18 in extra-marital cases.

A. I have put down that age because I recognise that a minor girl cannot be responsible for any of her actions.

Q. What is the conference you refer to of which you say that you are the Secretary?

A. The Visnagar Nagar Conference. We passed a resolution recommending 14 for the age of marriage.

Q. Do you think that it is taken by your caste people with good grace?

A. The Nagars are advancing. You do not find many marriages which take place at less than 14. In the villages the marriages take place earlier and they require education.

Q. Are you aware of any caste in any place where you think the statutory law fixing the age of consummation at 13 has been infringed?

A. It is difficult to find it out.

Q. Do you think that the law is known?

A. Even in cases where the law is known it is honoured more in the breach than in the observance.

Q. Do you think that the law is infringed at all?

A. In cases it is infringed, it may be unknowingly but not knowingly. It is due to ignorance of the law.

Q. Do you think that if we raise the age of consent to 16 more cases would come to light than now?

A. Naturally. People will perform certain ceremonies and infringement of the law can be found.

Q. The people might drop the ceremonies altogether.

A. But religious injunctions enjoin the ceremonies.

Q. But the Gaona ceremony might disappear altogether and the law might be defeated.

A. No; in Marwar they do observe the ceremony and there is some sort of public procession on the occasion.

Mrs. Nehru : Does Gaona ever take place simultaneously with the wedding ceremony?

A. No.

Chairman : In Baroda the punishment for the infringement of the marriage law has been fine only and it has been paid in many cases.

A. I think the fine is not prohibitive.

Q. What fine would you have then?

A. If you want to make it prohibitive I think it should be a thousand rupees. That will be deterrent.

Mr. Kanhaiya Lal : How is the law fixing the age of marriage working in Baroda?

A. It is working satisfactorily, but people take advantage of the fine and celebrate the marriage by paying the fines.

Q. What about the exemptions in the law? Are they easily granted?

A. That depends upon the Magistrate who decides it.

Q. If we have a law fixing the age of marriage here in British India would you like that we should have similar exemptions?

A. Yes; I think you can provide for exemption and leave it to be granted at the discretion of the Magistrate.

Q. What would you suggest for making the law effective if you fix the age of consent at 16?

A. That will depend upon the social propaganda and the method of investigation which the Government adopts. The marriages should also be registered.

Q. By whom should the report of the marriage be made?

A. By the marrying parties or the parents or guardians.

Q. On whom would you place the duty of registering these marriages? Would you place the duty on State authorities or the municipal and local boards?

A. Yes: on the state and municipal authorities.

Q. In the villages?

A. In Baroda we have got local panchayats. Similar bodies might be asked to maintain the register in the villages.

Q. Would you recommend that these should be maintained by the authorities who maintain the birth and death registers at present?

A. Yes; it can be done on similar lines.

Q. Would you recommend that on such registration, a free marriage certificate might be given by the person registering the same?

A. Yes; otherwise there is no use registering the marriage.

Q. Are such certificates granted in Baroda?

A. No.

Q. Would you further recommend that in the case of births also similar certificates should be granted?

A. The number of births would be very large and it would be a hard work on the authorities.

Q. Have you got any other suggestions to make for the law being made effective?

A. There should be social propaganda. The Government should take part and do propaganda work as they are doing now in the case of the co-operative societies. They must carry on such propaganda from village to village. They must have special organisers for the purpose.

Q. Would you recommend the formation of vigilance societies or panchayats for the purpose of carrying on preventive as well as detective work?

A. It will be difficult to make them work.

Q. In other words you say that it would be difficult to find out workers who would devote themselves to the work earnestly.

A. Yes; that has been my experience till now.

Q. Suppose we give the powers to the caste panchayats?

A. That may or may not be helpful because it will depend upon the temperament of the Caste patels.

Q. Supposing we give the power to social reform organisations in the country will they help us?

A. At present I think propaganda is the only thing which will be effective. My general experience of these organisations has been that it is difficult to get amongst them the class of men who will do such work.

Q. Cannot you get some men who will be prepared to work and start societies for this purpose?

A. Societies are started very soon, but they cease to work very soon also.

Q. What about the existing societies?

A. I do not think they have got the time to do the work.

Q. Would you make the offence cognisable?

A. The parents would never file the complaint. The offence should be investigated by police officers of the higher order, say gazetted officers.

Q. On that condition would you allow the case to be initiated?

A. Yes.

Q. Is there not the danger of ill-feeling being created between the husband and the wife?

A. If you enact a law, you should be prepared for the consequences.

Q. Would you allow the offence to be compounded so that the feelings between the parties might be mitigated where possible?

A. If you allow compounding the law would be ineffective.

Q. It might be possible to restore good feelings between the husband and the wife in cases where the husband gets penitent or repentant. Otherwise there is the danger of the husband discarding the wife and the girl being ruined for life.

A. In that case I fear almost every offender would come with a penitent face. I think we cannot vouchsafe for the advantage of the offence being made compoundable in such cases.

Q. Would you make the offence compoundable with the permission of the Court?

A. I have already said that I would leave it to the presiding Magistrate to allow the offence to be compounded or mitigate the sentence.

Mr. Kadri : You say that meetings of ladies have been held in various places and resolutions passed to that effect. May I know what places you have in mind?

A. We had a meeting of ladies at Santa Cruz after the Sarda Bill was introduced in the Assembly. We had a meeting in Baroda also.

Q. How many ladies were present at the meeting in Santa Cruz?

A. About a hundred ladies, who could all possibly be there, attended the meeting. The meeting included ladies of all castes and they advocated legislation on the lines contained in Sarda's Bill.

Q. Where was the Conference you refer to of which you are the Secretary last held?

A. It was last held in Surat in 1925. Where we passed a resolution about raising of the marriage age, and recommended 14 for girls.

Q. In paragraph 2 you say "it would be preferable as a prelude to the general rule, to raise the age in cases outside marriage and give a chance to the people to raise it by option in cases of marriages as they advance in education and social reform." Is it therefore your opinion that we should first recommend legislation for raising the age of consent in extra-marital relations?

A. I would modify my opinion and fix fourteen for intra-marital cases and 18 for extra-marital cases.

Q. May I take it that in the case of marital offences you recommend that the offence might be made cognisable and anybody might complain, and the enquiry might be made by any police officer not lower in rank than a gazetted officer? Do you not think that in villages where there are usually factions people might bring in false complaints and cause unnecessary trouble in the family life of innocent individuals?

A. I do not think there will be any such difficulty if the complaints are enquired into by a gazetted officer.

Q. But people with ulterior motives might bring forward complaints.

A. The enquiry must be held in closed doors and the officer must first make sure whether the complaint is right or wrong. If the case is not proved he might drop it himself.

Q. One of the witnesses suggested that we might have a Director of Public Prosecutions who would go through the police papers and decide whether the case should be sent to the Court or not. What is your opinion?

A. That would be an ideal thing. He will be a specialist in the branch and will have expert knowledge of conditions, and there will be less of harassment then.

Mr. Bhargava : In Ajmer are these Marwaris Agarwals or Jains?

A. Ajmer abounds both in Agarwals and Jains.

Q. Are you aware that these Jains do not follow the Manu Smriti?

A. No; but yet so far as consummation is concerned there is no injunction amongst them.

Q. These Jains have got a Maha Sabha and amongst them conferences are held almost every year. Do you know if any age has been fixed by these conferences?

A. No.

Q. Do you know that amongst these Agarwals Goana takes place generally 3 or 5 years after marriage?

A. In some cases it takes place when it is convenient to the parents.

Q. You are fixing the marriageable age at 14. And orthodox opinion would be as much opposed to 16 as 14, and we have to fix the age somewhere. In that case what objections have you got to fixing the age at 15 or 16?

A. I fix 14 because I think the husband would be about 18 at the time of the consummation and he would then be responsible for his actions.

Q. Then may I take it that the idea in your mind is that you fix 14 so that you may fix the responsibility on the offender?

A. Yes.

Q. So far as the question of the welfare of the girl is concerned do you not take it into consideration?

A. I think at 14 a girl would have proper constitution.

Q. Supposing medical opinion say that at 14 there is danger of there being injury to the girl, and the progeny will not be healthy, would you then prefer 15 or 16?

A. I am not basing my conclusions on medical opinion but on general conditions of the society. If, however, medical opinion says that at 14 there is danger, I am prepared to raise the age.

Q. You have stated that in Baroda fine is regarded as part of the marriage expenses. Supposing we have a marriage law would you then have fine as well as imprisonment?

A. In Baroda it is fine or imprisonment. I would make the fine prohibitive and increase it to one thousand rupees, or in lieu of that imprisonment.

Q. You have suggested that Government should take up propaganda work. Would you suggest means by which that can be done?

A. This can be treated as part of the co-operative work. Even now members of the co-operative society are preaching social reform.

Q. The Health Officer in each District is in charge of the health in each District. Would you like that he should be entrusted with this kind of work?

A. Yes; if he has the time to do it.

Q. In cases in which the complaints are made by the parents or guardians and in which the police does not interfere would you like to have a preliminary enquiry?

A. I would leave it to a gazetted officer of the police.

Maulvi Muhammad Yakub : Can you tell us what improvements the matrimonial law in Baroda has effected in the general health of the children as well as of the girls?

A. The health of the children and the girls do not depend entirely upon the marriages. Our economic conditions are more responsible.



Q. Do you mean to say that the law in Baroda has not created any beneficial results upon the health of the children and the girls?

A. It has had its effect. But I cannot make any definite statement on that point.

Q. Has it reduced infant mortality or mortality among girl mothers to any appreciable extent?

A. I have not got figures to explain it.

Mr. Mitra : In paragraph 1 of your statement you say there are some castes in which marriages have to be performed on a fixed day simultaneously. In paragraph 2 you say where the law as it stands at present is to be ignored for circumstances beyond the control of the men concerned, there are no reasons why it should not be advanced. Here I think you are referring to some of the exemptions in the marriage law in Baroda?

A. Yes, there is one caste in Baroda, Kanbis. There is a rule that they must marry at a particular date.

Q. Don't you know the suggestion that the marriage committee put forward that after 3 years the exemptions should be done away with in Baroda?

A. I do not know.

Q. Do you prefer to have some speedy procedure?

A. Yes.

Q. Do you know that in Baroda there is a procedure to get these cases finished within a short time?

A. Yes, I do not know the details.

Q. In paragraph 9 you say it would be difficult to legislate for special cases, the attainment of puberty may be laid down as a test for the commencement of physical maturity to justify the consummation of marriage. Do you seriously hold that the attainment of puberty is a sufficient sign of physical development for consummation?

A. I had a feeling when I sent that statement that there is a great difference in the age of puberty and we cannot legislate definitely. So I took the age of puberty as the only test for coming into maturity. I think there is a medical opinion that in the case of girls who are physically weak menstruation starts early.

Q. So attainment of puberty is not a test.

A. No.

Q. In paragraph 11 you say we might turn to second marriages of elderly men with young girls of say 12 or 13 where the consummation of marriage takes place as soon after the marriage as possible. Are you in favour of any legislation barring marriages between men of 40 or 50 and young girls?

A. Left to myself I would make the second marriage of men over 40 impossible.

Q. Or that they should not be allowed to marry with girls below 16?

A. Men of 40 or 45 should not be allowed to marry at all.

Mrs. Nehru : You have said in the earlier part of your evidence that many people from your community go out to their country after marriage. Do they marry early because they have to go out?

A. Yes.

Q. Is that in the higher classes of people or lower classes?

A. Higher classes. Lower classes generally are confined to villages.

Q. Do you think that they marry and go out of the country?

A. Yes.

Q. In that case consummation of marriage cannot take place early?

A. No.

Q. Has any attempt been made by your society to educate the people?

A. We are having a propaganda by our conference. We have appointed a sub-committee for propaganda work and members on that sub-committee are from different localities.

Q. Then you confine yourself to your community only?

A. Yes.

Q. Then whatever you have said is on behalf of your community that is Nagar Brahmans, and on behalf of nobody else?

A. Yes, Nagar Brahmans in Gujerat.

Q. In paragraph 1 you say that boys and girls are married at earliest ages and girls are brought to the father-in-law's house as a help in the conduct of domestic affairs. Is it with the consent of the parents or without the consent of the parents?

A. With the consent of the parents.

Q. Parents bring it about and they are responsible.

A. Yes.

Q. Then you say the enforcement of the law causes dissatisfaction which generally is shared by others in sympathy with the sufferers. What exactly do you mean by this?

A. What I mean by this is that poor people generally send their girls to the husband and they arrange the early consummation of marriage and the neighbours although they may know that it is against the law sympathise with the parents because they know that they are compelled by circumstances.

Q. In other cases has this law been enforced?

A. I do not know.

Q. Paragraph 2—Do you mean to say that you would rather rely on social reform than on legislation in cases of this nature?

A. Yes. If you can fix some recognised means of social propaganda it would be much better. If Government takes up this propaganda work then it would be very effective.

Q. Fixing the age in marital cases is also one means of making propaganda?

A. No.

Q. What age would you like to have? The attainment of puberty you do not consider enough because you say it is not for the good health of the girl that marriage should be consummated at or soon after puberty?

A. I would have 16 as the age of consent.

Q. What punishment should be awarded in extra-marital cases?

A. I have said that it should be fine or imprisonment.

Q. Would you make any distinction below 12 and above 12?

A. Below 12 it must be very heavy punishment and above 12 it should be fine or imprisonment.

Dr. Beadon : Could you give any definite instance in which girls married at 12 and 13 and having become mothers at 14 or 15 suffered?

A. Yes.

Q. Is it always in the case of second marriages?

A. Yes.

Q. What happens to them?

A. They generally get weak and die of consumption.

Q. What percentages of marriages would that be? Would it be 10 per cent. of the marriages?

A. I cannot definitely tell the percentage but there are cases like that.

Q. Are they a large number or only two or three?

A. As the number of marriages is more, these cases must be many. I think that is one of the causes of maternal mortality.

## Written Statement of the Daivadnya Association, Bombay.

1. Yes.

2. The present state of law is not apace with the enlightened public opinion which is in favour of raising the age-limit to 16 in the case of girls other than wives and to 15 in the case of wives so as to validate their consent to sexual intercourse.

3. No. The amendment of the law made in 1925 raising the Age of Consent to 14 years may have prevented or reduced cases of rape.

4. It is our opinion that the amendment of 1925 has been effective in protecting married girls:—

- (i) by postponing the consummation of marriage,
- (ii) by stimulating public opinion,
- (iii) by putting off marriage beyond 13.

5. The girls attain puberty at the age between 12 and 14. It differs in different classes of people according to the state of their health and social environments.

6. No. As marriages very rarely take place before 13, there is no chance of cohabitation before puberty, soon after or before, the girl completes 13 years.

7. To custom.

8. Yes. The Garbhadan ceremony generally coincides with the consummation of marriage, but never precedes it. It is performed sometimes after the attainment of puberty.

9. No. At the age of 16 or 2 or 3 years after the attainment of puberty.

10. At the age of 16.

11. No.

12. Yes. The early consummation of marriage is responsible for high maternal and infantile mortality and also for the intellectual and physical deterioration of the people.

13. Yes. It is confined to enlightened classes.

14. No.

15. Yes. We suggest that Birth registers should be kept and made compulsory throughout India with facilities for inspection.

16. Yes.

17. We should separate extra-marital and marital offences. The offence in extra-marital cases is most serious and affects society and its morals. Whereas in marital cases it affects individuals only. In our opinion the punishment for extra-marital cases should remain as at present. But in marital cases sentence should be simple imprisonment for 2 years.

18. Marital Offence—Compoundable with the consent of the court; bailable; trial by Magistrate, 1st Class or Presidency Magistrate. Extra-marital cases—No change. We suggest that both these cases should be heard in camera.

19. We suggest that provision should be made to register all marriages with declaration of age made therein and other facilities.

20. Penal legislation fixing the minimum age of marriage will be more effective than legislation for fixing the maximum Age of Consent for marital cases. But the minimum age should be fixed as high as possible.

21. The strengthening of the penal law would be preferable.

**Oral Evidence of Professor V. N. HATE, B.Sc., President, Daivadnya Association, Bombay.**

*(Bombay, 26th October 1928.)*

*Chairman:* Are you the President of the Daivadnya Association?

A. Yes.

Q. How long has it been in existence?

A. 24 years.

Q. What is the membership?

A. About 100. It is confined to our community.

Q. Is this the opinion of the whole body or is it your personal opinion?

A. This is the opinion of the committee but it was sent with the general consent of the meeting.

Q. When do marriages take place generally in your community?

A. At present they take place not before 14 or 15 but formerly they used to take place at 13 or 14. Owing to the scarcity of young bridegrooms sometimes the marriages take place at 16 or 18.

Q. Is it an economic necessity?

A. Yes.

Q. Do many girls learn in your community?

A. Many of them go to schools.

Q. You do not think there is any chance of cohabitation before 13?

A. No.

Q. Would you say that of the entire community or of the advanced class in the community?

A. I cannot say of the villagers but in the city we can say that that is the prevailing age.

Q. You want to raise the age to 15 within marriage and 16 outside marriage. What is the reason for this difference?

A. Outside marriage it concerns the morality of the society and the higher the age the better.

Q. Then why not 18?

A. We will not have any objection to raise it to 18 but we must take into consideration the ignorance of the masses.

Q. Have you considered the bearing of the question that even at 15 a girl is not fit to be a mother?

A. Really speaking from the medical point of view she is not necessarily altogether fit but it is a lesser evil than the age of 13.

Q. You recommend this as a step towards a higher age.

A. Yes.

Q. You have said in answer to question No. 19 that you want to register marriages?

A. Yes; at the time the marriage is celebrated the parties must make this declaration and have it registered. If the age is registered there will be no difficulty.

Q. Supposing there is registration of marriages and as you say there is a marriage law of 14 for girls, then every man will say that the girl is 14 although she may be a little less. Is that not so?

A. We have also suggested birth registration and these two should tally.

Q. If there is birth register which is accurate then do you think there is still a necessity for marriage register?

A. Yes, in order to make doubly sure.

Mr. Kanhaiya Lal : Would you make the marital offence cognizable or non-cognizable?

A. I do not think it should be cognizable.

Q. You think it should be enquired into on the complaint of the girl or her parents or guardians?

A. Yes.

Q. Also relations interested in the girl?

A. Yes.

Q. Would you like to give that power to other individuals such as neighbours or other people residing in the city?

A. Anybody can give information.

Q. Do you think we can have some help from social reform associations or Daivadnya Associations like yours or other caste panchayats to look after and watch these cases?

A. I am doubtful whether these associations will agree to look after these cases.

Q. Can not caste associations be absolutely trusted to do vigilance work on behalf of the public?

A. In fact they have been neglecting their work.

Q. Are they likely to be more in sympathy with the caste than with the girl in matters of this kind?

A. Yes.

Q. Is it for this reason that they consider this offence more or less a technical offence?

A. Yes.

Q. You have already suggested that you would make the offence compoundable. Is that with the sanction of the court?

A. If there are extenuating circumstances the court may have the power to give sanction.

Q. Would you be satisfied if we require a preliminary enquiry to be made by the magistrate before a notice or summons or warrants are issued to the accused in order that malicious and vexatious cases may be eliminated in the beginning?

A. I would recommend it by a first class magistrate.

Q. Would you be satisfied if we make the case cognizable but require that the enquiry should be made only by an Inspector or Deputy Superintendent of police?

A. Such offences ought not to be made cognizable.

Q. But even now it is cognizable up to 12 years. Would you make it non-cognizable in all marital cases irrespective of age?

A. Yes.

Q. Would you recommend that these marital offences should be transferred for trial after the preliminary enquiry to matrimonial court constituted for the purpose consisting of a magistrate and one or two non-officials in preference to a single magistrate?

A. It would simply prolong the enquiry.

Q. How will it prolong the enquiry? There will be a matrimonial court existing only for this purpose. Do you think it will inspire greater public confidence?

A. Yes it may if matrimonial courts are brought into being for the time being.

Q. Can you suggest any measures to make the law effective?

A. We have suggested that the registration of marriages should be compulsory.

Q. Would you be in favour of forming vigilance societies in towns and villages for watching and looking after these cases consisting of different classes?

A. This ought to be the work of the social league and there ought to be greater propaganda. The laws are not known to the people at present.

Q. Do you think official leagues would work if they are started with 5 or 10 members from different parts?

A. If they are enjoined this sort of work they would be satisfactory.

Q. Should the members be of a voluntary character or should they be nominated by municipalities or district boards?

A. It would be better if they are nominated by Government, because it would be obligatory for them to do the work.

Q. Supposing we give nomination to local self government, one or two nominations from each municipality or district board, one or two nominations to Collector and we also ask the panchayat to nominate members to this society. Would they work and be helpful in this matter?

A. That ought to be.

Q. As regards caste panchayats, do you think they will take interest in watching and looking after these cases?

A. If they are made to understand properly the whole thing, the evils arising out of early marriage and the evils arising due to transgression of the law, it will be helpful.

Q. As regards registration of marriages—on whom could the duty of maintaining records of these marriages be placed?

A. According to the civil marriage act marriages are registered by a magistrate. I only want that there should be records of marriages kept by some authority just as we have records of births and deaths and I think the system of civil marriage would be better.

Q. It has been suggested from time to time that there should be a report of marriages giving the names of the marrying parties and their ages so that it might serve in time of need. Who should keep this record?

A. Municipal boards or district boards may be asked to keep the records.

Q. Would you place the obligation to report these marriages on the parents or guardians of the parties or on the priest also?

A. The girl's parents or guardians are the persons who are responsible for marriage. The priest only performs the marriage ceremony.

Q. If they do not make a report within a definite time they should be liable to a penalty or fine. Do you agree to that?

A. There should be a nominal fine.

Mr. Kadri: What is the Daivadnya Association?

A. It is a sort of society for advancing the education and activity and social well being of the Sunar caste.

Q. Is your membership confined to Bombay?

A. Not necessarily confined to Bombay, it is in all parts. We have got members from the Bombay city.

Q. You say that in extra-marital cases you would raise the age to 16. I put it to you that under the Indian Majority Act a girl is minor till 18. In view of this fact would you raise the age to 18?

A. I personally would have it at 18 but we have to take into consideration the masses. No one of course can have sympathy with a man who commits an immoral act.

Q. You say there should be no change in the law with reference to punishment and procedure. Are you satisfied with the present provision?

A. Yes.

Mr. Bhargava : You say that declaration of age should be made. Who is to make this declaration of age?

A. The guardian. When the marriage takes place they will inform the authority that a certain marriage has taken place and the age of parties may be entered in it.

Q. Will the guardian be required to give a written statement?

A. Yes.

Q. Do you know that most of the people are illiterate and cannot write?

A. They must get somebody to write it for them.

Q. If it were wrong then the man who wrote that shall have to be called and we may not know who is the man who wrote it?

A. It will be a sort of guide.

Q. Is it not likely that these declarations might be wrong because the person who would celebrate the girl's marriage would not give the right age if she is below the prescribed age?

A. That is why we have suggested that births should be registered.

Q. Why do you require this declaration when birth register is correct?

A. Birth certificate may not be available.

Q. You say that the right of complaint should be given to all relations interested in the girl.

A. Yes.

Q. Should every person be given this power or only the girl's relations?

A. I have already said that everybody may have the right of complaint.

Maulvi Mohd. Yakub : Is your community confined to Gujrat?

A. It is more on the Ratnagiri side.

Q. What is the total population of your community?

A. About 14,000 or 15,000.

Q. Does ever consummation take place in your caste before 13?

A. It does not take place before puberty.

Q. What is the age of puberty?

A. The average age is 13-14.

Q. What is the proportion of infant mortality in your community?

A. I could not tell you the exact percentage but it is not very high.

Q. What is the average age of motherhood?

A. 15 or 16.

Q. Are there any cases of deaths of child mothers in your community?

A. I am not aware of any.

Q. You say that in marital relations the power of complaint should be given to everybody.

A. Strangers have nothing to do but those who are interested in the welfare of the girl should be empowered.

Q. What do you mean by those who are interested in the girl?

A. If the offence is a real one I do not see why power should not be given to them.

Q. So you want this power be given to everybody?

A. Yes.

Q. Don't you think there might be cases in which the motive would be personal malice and the result will be that there will be harassment?

A. The party harassing should be punished.

*Mr. Mitra :* You are for fixing the minimum age for marriage and in paragraph 20 you say the minimum age should be fixed as high as possible? What is the age which you propose to fix?

A. 15 for marriage.

Q. In paragraph 17 you say that in marital cases the punishment should be simple imprisonment for 2 years. Do you suggest it in all cases, even when the girl is below 12?

A. Yes. Certainly if the girl is 8-10 years and cohabitation is attended with violence the offence becomes more heinous.

Q. Then are you for punishment in those cases as it is in the present law?

A. Yes.

Q. As regards extra-marital cases you fix the age at 16 or even 18. Considering the ignorance of the masses don't you think ignorant people require more protection or do you think there will be agitation among the ignorant people in non-marital cases also?

A. The lower classes marry at an early age so that 16 would be quite sufficiently advanced for the girl to know what the consequences will be.

Q. May I interpret you that girls here are more literate?

A. There is no education amongst most of the girls, they are ignorant and are very strict about religious customs.

Q. In the case of non-marital relations does the question of religion arise at all?

A. No. There will be no agitation if the age is fixed higher in non-marital cases but we cannot say what these fanatic people may say.

Q. These people are likely to be agitated when there is a law in marital cases. Don't you think it will be otherwise in non-marital cases? They want protection for their girls. Higher age will not interfere with their custom in non-marital cases?

A. No.

Q. As regards the registration of marriages—do you mean merely recording of marriages or there should be regular registrars?

A. Regular records should be kept with some responsible authority.

Q. Have you any experience of villages?

A. No.

Q. Do you think district boards will serve this purpose?

A. Yes. Police patels and talatis can do it. They will be serving in the district boards.

Q. Your point is that district boards will be helpful in recording these marriages?

A. I am not in a position to say.

Q. Do you not want marital cases to be cognizable?

A. No.

Q. Are you not agreeable even when we give the right to higher police officials?

A. No.

Q. Will you tell us what are the reasons for it? Do you think there will be much harassment by the police?

A. I have no personal experience but it is from reading newspapers.

Q. Do you see from the papers that police has brought false cases?

A. We have read some accounts where police interference has taken place in marital cases.

*Mr. Mudaliyar :* In marital cases what exactly do you think the police will do?



A. The police may be instigated by some body and they will harass people.

Q. In marital cases the wife's evidence is essential and they cannot get at the wife. Are you not importing your general prejudices against the police?

A. I think it is undue interference with the domestic affairs.

Q. In what way will the police interfere—either the offence has taken place or it has not. They must get the relations of the husband or the girl to give evidence. No stranger can give evidence. Do you mean to say that the girl's parents will be ready to give false evidence against their own son-in-law?

A. I think there will be harassment. Police may get false evidence.

Q. Have you considered how the police can get false evidence in cases of this nature?

A. If somebody has got some ill feeling against the husband's family he will go and instigate the police to investigate the matter. The police will come in and it will cause harassment.

Q. And then they will ask some questions from the husband or the girl's relations?

A. Yes, that is what I meant.

Q. You have given 15 as the minimum age for marriage. What would you put the maximum Age of Consent within marriage?

A. It may go higher but we have referred to 15 in such a way that it may be fixed for consummation.

Q. You say that the case should be compoundable with the consent of the magistrate. What do you think are the considerations which may influence the magistrate in allowing the compounding of the case?

A. Yes. If the girl is just below the prescribed age it may be allowed.

Q. You have said that extra-marital cases should be heard in camera so as to avoid unnecessary publicity. Do you think it is possible that the name of the outraged girl or women could be kept a secret?

A. My personal opinion is that the name should be published.

Q. You are not anxious to keep it secret from the papers?

A. The more it is known the better it will be.

Mrs. Nehru : In marital cases whom would you like to take up the investigation of the case—the parents or guardians of the girl?

A. They should be the complainants.

Q. Don't you think if the right of complaint is restricted to parents and guardians, they will hardly take advantage of it?

A. It should be the responsibility on the parents.

Q. Your answer in paragraph 3 where you say that the amendment of 1925 may have reduced cases of rape is very vague. Can you tell us whether it has reduced or not?

A. I do not think it has had any effect.

Q. Is it because the law is not known?

A. Generally such cases happen in the lower classes. It may have had effect but I am not aware of it.

Q. In paragraph 4 you say that the amendment has effected the postponement of consummation of marriages. Have you any reasons to believe this amendment has had that effect?

A. We have during the last few years been obliged to celebrate marriages after 13 years. It is only by the force of circumstances that we were obliged to raise the age of marriage.

Q. Then it has not been effective? And if it has been you are not aware of the fact?

A. No.

Q. Is there a large number of widowers marrying young girls in your community?

A. Widowers do marry young girls and that is one of the evils which ought to be prohibited.

Q. Is there a large number of such men?

A. Yes, because widow remarriage is prohibited.

Q. Would you put it at 15 per cent. of the total marriages?

A. I cannot say exactly but I think it will be about that.

Q. You say that birth register facilities should be provided. What exactly are those facilities you are referring to?

A. Whenever any birth register is required to be inspected or the age is wanted to be known then people should be allowed to see it.

Q. This is done at present also.

A. We do not know but we have only specified it.

*Dr. Beadon :* In answer to question 12 you say that early consummation of marriage is responsible for high maternal and infantile mortality. Could you give us any cases which have come to your personal knowledge of high maternal mortality due to early consummation?

A. There have been such cases which lead to the deterioration of the mother.

Q. How long after this deterioration sets in?

A. Generally one or two years after specially when widowers marry young girls.

Q. Is it due to labour or child bearing?

A. It may be; but ultimately the girl suffers in health owing to the effect of early consummation.

Q. Have you any specific instances in your mind?

A. No.

**Written Statement, dated the 12th August 1928, of Mr. MANIKRAM NANABHAI TALPADE, B.A., LL.B., on behalf of the Pathare Prabhu Social Samaj, Bombay.**

1. The present state of law is not apace with the enlightened public opinion which is in favour of raising the age limit to 16 in the case of girls other than wives and to 15 in the case of wives so as to validate their consents to sexual intercourse.

2. (1) Unnecessary.

(2) Girls under the age of 16 are rarely capable of understanding the consequences of the consent by reason of life, they lead, governed by restrictions of caste and creed, viz., the effect on their own health before and after maturity and on their progeny.

3. The raising of the Age of Consent has had salutary effects on the morals of the society as can be seen from the operation of the Prostitution Act and as well as Sections 372 and 373 of I. P. C.

4. No answer.

5. 13; It differs in different classes of people because of the social environment.

6. No answer.

7. The early consummation of marriage is believed to be due to religious injunctions. (Reference may be made to Manu, and other writers, on Dharma Shashtra.) They are understood to be recommendatory but they are construed to be mandatory.

8. Yes. It coincides with the consummation of marriage. It is performed after the attainment of puberty.

9. No. *vide* answer to question No. 1.

10. 16.

11. Yes.

12. Yes. There is a natural defect in woman in the age between 10 and 15 due to early marriage and premature motherhood. (See also Report Vol. VIII of 1911, Chapter on age and sex).

13. Yes. It is confined to enlightened class.

14. It is the belief that women do favour early consummation of marriage for their children.

15. The difficulties encountered are very great. The surgeons who are referred to for determining the age of girls merely rely on standard books of Medical Jurisprudence but that is not sufficient. In remoter parts, no birth registers are kept. We suggest that Birth Registers should be made compulsory throughout India.

16. The difficulty will be reduced considerably if the age limit is raised to 14 and above.

17. We ought to separate extra-marital and marital offences. The offence in extra-marital cases is most serious and affects the society and its morals. In other cases it affects the individuals only and is more an offence against the person than against Society. In our opinion the punishment for marital cases ought to be different from what is now prescribed. In extra-marital cases, it is alright; but in marital cases, sentence ought to be simply simple imprisonment in view of Sarda's Bill.

18. Marital offence—compoundable with the consent of the Court; Bailable; trial by Magistrate 1st class or Presidency Magistrate. No change in extra-marital cases.

19. No answer.

20. Penalising marriage will be more effective than penalising consummation of marriage and that is in accordance with the Public opinion.

21. Under all circumstances we want both Penal Legislation and Educational and Social propaganda.

**Oral Evidence of Mr. M. N. TALPADE, President, and Mr. RAO, Member of the Committee, on behalf of the Pathare Prabhu Social Samaj.**

(Bombay, 26th October 1928.)

*Chairman* : How long has the Samaj been in existence?

A. Since the year 1888.

Q. What is the present membership of the Samaj?

A. 700 nearly.

Q. I suppose this opinion is the opinion of the Samaj.

A. Certainly. We had a general meeting and there it was settled to send this reply. The membership of the Samaj is restricted to people who have studied at least upto the 4th English Standard.

Q. You don't take illiterates as members of your Samaj?

A. We have no illiterates.

Q. Do you look upon your community as an advanced community with regard to this particular question?

A. Certainly.

Q. What is the marriageable age among your community?

A. 16 and above and not less than that under any circumstances.

Q. How long has this practice of late marriages been in vogue?

A. I suppose even before 1900. For a considerable long time.

Q. You probably have friends among the non-Pathare communities also. I find that your opinion is almost similar to the other Samajes, like the Daivadnyas?

A. Excepting the Gujrati communities and sub-sections of the Gujrati community I think our opinion tallies with the opinion of other communities in Bombay. The Gour Saraswat and even the Deccanese Brahmins have almost the same opinion. It is more the economic conditions to which people are subject than anything else that has made them raise this age.

Q. Apparently in your community it is not on account of economic conditions.

A. Our community is an educated and enlightened community and marriages take place late.

Q. Is it a fact that in your community large dowries are demanded and marriages are therefore put off?

A. Years ago it was done. Even then the dowry was not so much a demand to be made from the bride's father. It was a sort of settlement.

Q. You may consider whatever you like but is it a fact that large dowries are demanded?

A. That idea is not prevalent now.

Q. Do the girls of your community who are married after 16 compare favourably as regards, their progeny and their own and their infants' mortality and so on?

A. They do. That is what I have found by experience.

Q. Is there a large number of cases in your community of tuberculosis?

A. Mothers very rarely suffer from tuberculosis.

Q. Have you reason to believe that the health of these mothers is better than the health of the girls of other communities, that is, because of the position in which girls are, their conditions of life, their ways of living, are they better than the girls of other communities?

A. A girl mother over the age of 16 is generally stronger, and her children are also stronger than the girls who become mothers below the age of 16. At the age of 16 or thereabouts the girls are not generally fully physically developed.

Q. In answer to question No. 12 you refer to some report. What is that book?

A. That is the General Census Report of 1911—Vol. VIII.

Q. In answer to question No. 20 you say penalising marriage will be more effective than penalising consummation of marriage. What exactly do you mean by this?

A. Our opinion is that if you raise the age of marriage there is no necessity of penalising consent. That is the gist of our answer. We are of the opinion that under no circumstances should a girl get wedded before 16. But considering the social circumstances and the social conditions of all other people and the religious views that the people entertain 15 would be the proper age for legislation.

Q. Would you rather have a law penalising marriages below a fixed minimum age than raising the Age of Consent?

A. Yes. Because in that case no question of Age of Consent will arise.

Q. Suppose there is no marriage law, would you then have the Age of Consent raised to 16?

A. Yes. Personally I like that the age should be fixed at 16 for marital and 18 of extra-marital cases. But for the purposes of law it may be 15 for marital and 16 for extra-marital cases.

Mr. Kanhaiya Lal : What is the total population of your community?

A. About 5,000. And almost all are in Bombay proper.

Q. You have got no members of your community outside Bombay?

A. There are a few families only.

Q. How is it that you are concentrated in Bombay?

A. Because we belong to Bombay proper. From very old times, from the 13th century we have been here.

Q. What caste is your community?

A. Kshatriya.

Q. Can you tell me why there is such a high percentage of unmarried women in your community? About 33 per cent. according to the figures given in your report are unmarried.

A. It is because of the responsibility that a youngman feels when he is taking a wife. A youngman in our community does not consider that he must marry because it is enjoined on him by shastras. He realises that by marrying he is undertaking a responsibility which he must be able to shoulder properly.

Q. Or is it due to dowry system?

A. That is dead now. It died about 30 years back. It is on account of prudential considerations that the marriages take place late.

Q. I further find that out of the 66 per cent. married only 20 per cent. give birth to children. Should I take it that the remaining 80 per cent. are sterile?

A. Not necessarily sterile. There are very few marriages. We are a dying community, there is no doubt. There is a tendency towards sterility also.

Q. In Baroda an enquiry was made about "fertility". It was found that fertility decreases as the age of marriage advances. Does it apply to your community or are there any other reasons why so few women should give birth to children?

A. It is also due to city life.

Q. How is it that the percentage of unmarried males is very high. About 2/3rds. of the people die unmarried? Is there a paucity of girls?

A. The only consideration for their not marrying is the economic condition.

Q. Do you allow widow re-marriage?

A. We do not object to it. There has only been one case of widow re-marriage upto this time. It was some 10 years back. There is the advanced section and the old section. The advanced section is in favour of widow re-marriage.

Q. What is the usual age at which marriage takes place in your community?

A. Between 16 and 20.

Q. What is the usual age when consummation is affected?

A. Soon after marriage.

Q. Have you got any 'Annu' or 'Goana' ceremony in your community?

A. There is the 'Solah' or the 'Garbhadan' ceremony which takes place two or three days after marriage, and the girl is then sent to the husband's house.

Q. Is there a high infant mortality among your community?

A. Not high.

Q. Is there high maternal mortality?

A. No. Both the girl and the boy being healthy there is much less chance of mortality.

Q. Are you vegetarians or non-vegetarians?

A. Non-vegetarians.

Q. Can you suggest any measures for bringing breaches of law to light wherever they occur?

A. I suppose if birth registers are kept properly these cases would be brought to light.

Q. How can birth registers help in bringing cases to light?

A. There ought to be social propaganda also in that direction. If the birth registers are kept properly, it will be possible to find out whether the girl is above 13 or not. Suppose in the Gujrati Community a girl is married who is below 13, you can find out the age of the girl at once from the register. It should be open to anybody to find out the age of the girl, and it should be open to anybody to make a complaint.

Q. Between 12 and 13 it is open even now, but nobody comes forward to make a complaint. Would your association, for instance, help in bringing cases to light about other communities?

A. Unless there are social institutions of the type we have, it is impossible to bring these cases to light, because the parents do not like that these things should come to light.

Q. Would you like to have vigilance societies, consisting of representatives of different communities, to help in this work?

A. As a matter of fact this work should be taken up by ladies. They would do it more effectively than men. They will naturally be more interested. They can educate public opinion.

Q. Would you like that the membership of these vigilance societies be nominated or voluntary?

A. They should be both, partly nominated and partly voluntary.

Q. Would caste panchayats help us in this matter?

A. We have not got any caste panchayats in Bombay. If they were they would help. They would act as a sort of vigilance associations.

Q. And might we constitute more panchayats in villages to help us in this work?

A. Yes.

Q. As regards nomination, who should be the authority to nominate?

A. The Government and the municipalities, both.

Q. Would you also give power to the social reform associations to take action in these matters?

A. Certainly.

Q. May I understand that you want to make the offence cognizable on the complaint of these bodies and on the complaints that may be received by the police?

A. Yes.

Q. Would you make them cognizable irrespective of age?

A. I would make them cognizable even beyond 12.

Q. But there is a large volume of public opinion which says that the police should have no hand in the matter, and these are domestic affairs and only persons who are interested in the girl should be allowed to bring complaints.

A. There is some truth in that contention and therefore our suggestion would be that there should be ladies in the police force entirely devoted to this sort of work.

Q. But you won't get them.

A. If we can get lady teachers and nurses, I don't see any reason why we should not get ladies for this purpose.

Q. It is different there. We would require trained police officers and it will take several decades before we will be able to get them.

A. They are more quick to pick up this work.

Q. Do you think it is possible to get ladies for this work in this part?

A. Yes.

Q. Will they be willing to come on the small salaries which the police force are getting?

A. I should think so.

Q. You have suggested that marital offences should be made compoundable with the permission of the court. Do you propose that they should be made compoundable irrespective of age?

A. They should be compoundable above 13 and the seriousness of each offence should be taken into consideration.

Q. A suggestion has been made that in order to obviate vexatious and false prosecutions the trying magistrate should be required to make a preliminary enquiry in each case before issuing a notice or warrant. Do you approve of that?

A. The proceedings would be very lengthy and very cumbrous. It would take a very long time before we would be able to arrive at a conclusion. Therefore the same rules should apply to these vexatious or other false complaints as are provided for in the Indian Penal Code.

Q. The object of making this preliminary enquiry compulsory is that this being a domestic matter if the girl is dragged from court to court, there is a possibility of scandal and dishonour to the family, and this enquiry would obviate all that.

A. In these preliminary enquiries the matters are likely to be hushed up.

Q. There can be no hushing up, if the preliminary enquiry shows a *prima facie* case?

A. Then you will have to establish separate courts. These very magistrates will not be able to cope with the work.

Q. Even now they have the discretion under section 202 to make an enquiry.

A. But that is very rarely done. We might have a separate court like the Children's Court.

Q. The reason why I suggest this is that there is a possibility of harassment to the members of the family and naturally people are averse to other people entering into their domestic happiness.

A. We have suggested women police therefore.

Q. Suppose we have women police, what do you suggest then?

A. They will be very useful for the purpose of investigation. We have experience of the Children's Court and ladies like lady David, are doing very useful work. If many ladies are not available we can have something like what is required for the purpose of this Bombay Prostitution Act, one inspector, one sub-inspector and one Jemadar.

Q. Would you like that cases of this character be made over to a matrimonial court for trial instead to the ordinary courts?

A. Yes. That would command better confidence. It would not evoke such opposition as other steps, like the enquiry by the magistrate.

Q. What should be the constitution?

A. One magistrate helped by one or two ladies as assessors.

Q. The assessors shall have no voice in the giving of sentences.

A. There are assessors in the Children's Court also and the magistrates generally sympathetically listen to them and the orders that he passes are generally in consonance with the opinion that they express.

Q. If ladies are not available?

A. Then men.

Q. In order to make this legislation effective would you advocate registration of marriages by a prescribed authority, giving the names of the marrying parties and their ages, to ascertain how far the law is being observed.

A. It should be made compulsory.

Q. Who should be the registering authority?

A. Government.

Q. Would you entrust that work to municipal boards or taluk boards, or the agencies now doing registration of births?

A. It may be, but if the Government has a department opened for this purpose, I think it would be more effective than these municipalities, etc. In rape cases it is very difficult to find out the exact age specially when the girl belongs to a far off district. Under those circumstances it is very difficult to come to a certain conclusion. There is this registration of births. We are told that these patels are authorised to register births, but when we go to them we find nothing and we are left only to determine the age from ossification of bones and such other things.

Q. Have you got any experience of the working of the system of registration in rural areas?

A. I am talking of districts from which two or three cases came to me. There I found these things. These cases were from the Belgaum District.

Q. Can you suggest anything to make registration more effective?

A. It should be made compulsory, and there ought to be a separate department.

Q. The difficulty is about the identity of the child and three suggestions have been made before us. One suggestion is that a supplementary report should be required to be submitted by the parents giving the name of the child, the second is that at the time of vaccination, which generally takes place within six months, the name should be copied in the birth register, and the third suggestion is that the birth order of the child should be entered so that we may be able to trace whether it is the same child or another child.

A. Yes, the difficulty arises when the first is sought to be substituted for the second or the second for the first. When the girl gets vaccinated the name should be there. It need not be transferred to the birth register. It should be made clear in the same register that is the first child or the second child.

Q. The name has to be transferred to the birth register because the vaccination registers are not permanently maintained. They are destroyed after a certain period, while these birth registers are kept for a very much longer time.

A. In that case the parents should be required to make a supplementary report and also to give the birth order of the child.

Mr. Kadri : A suggestion has been made that we should have a Director of Public Prosecutions to look into the enquiries made by the police in marital cases. This is simply to prevent false and frivolous complaints being brought in. What is your opinion about this suggestion.



A. Yes. He may be honorary or paid man. Such an officer should be selected from among those who can be called social reformers. That would enable us to have a man free from judicial bias.

Q. Would you suggest that we should have one for the whole Presidency or one for each district?

A. One for each district.

Q. Do you think, we can get honorary men to undertake the work?

A. We ought to be able to get honorary men. This is a thing which concerns us vitally.

Mr. Bhargava : You say that the offence should be cognizable. Then you recommend that there should be the Director of Public Prosecutions. From that it would follow that the police will have to take cognizance and then investigate under his guidance. A report will be made in the Roznama under section 54, Criminal Procedure Code, and that report will be sent to an officer, one certified copy of the report being kept in the police station. Those complaints should go to that Director who will be the final authority to choose such cases which should be brought to the court, and he will say whether there is any *prima facie* case or not.

A. Yes.

Q. If that plan is accepted the girl and the parents of the girl should have an independent right of complaint. So far as the subsidiary right of the ordinary man is concerned the Director may be able to direct prosecution if he likes. The parents should have the independent right of getting the wrong redressed. Do you not think so?

A. They should go through the proper channel.

Q. At present under the Indian Penal Code every aggrieved person has the right of going to the court in all cases. So far as the sanction cases are concerned the State has got the right. In this particular case when there is Director if the complaints of the girl and the parents also go to the Director, it may happen in certain cases that the Director may not see eye to eye with the girl or her parents and justice may not be done. You mean that any such case may come to the Director of Public Prosecutions as come through persons excluding the girl and her parents.

A. You can't have two methods of dealing with one offence. You must go through one channel.

Q. In your opinion this system would bring to light many more cases than at present.

A. Yes.

Q. In this scheme would you like that obligation be placed on every person to report a case to the police as soon as he comes across one and just as under section 44, Criminal Procedure Code, the man who being aware of the offence having been committed does not give the information should be penalised?

A. Yes.

Q. You have said that there should be a matrimonial court to try these cases. You say that there may be one magistrate and two non-officials who will form the court. I think you will like the case to be tried as an ordinary case and not as a Sessions case.

A. I like that there should be one trial.

Mrs. Nehru : You won't like summary trials.

A. In that case there is the possibility of some important evidence being not produced.

Mr. Bhargava : As regards the personnel would you like the Magistrate to be the First Class Magistrate?

A. Yes. He should be one who has been acting for some years. He should be an experienced man.

Q. What is your idea about associating two non-officials with him.

A. In order to help him.

Q. He is an experienced man who tries even cases under section 3 or 4. Why do you want to associate with him two non-officials? You know the rule that all offences are to be tried by the courts of the land and no exception should be made unless it is absolutely necessary.

A. This is simply to help the magistrate in arriving at the right conclusion.

Q. Have you come across a case in which the assessors have been useful?

A. They do help the Sessions Judge to come to a right decision.

*Moulvi Muhammad Yakub* : Are the assessors intelligent enough to give any help?

A. Choose such.

*Mr. Bhargava* : How would these vigilance societies work? What particular help would they give? They would go about and find cases and report them to the Director. This will be their only work and nothing more. Is it not?

A. They may also carry on propaganda work. Their work will be educative, preventive and detective.

Q. You say there should be registration of marriages. What is the object? Is it to prove the factum of marriage?

A. Yes, and to find out the age of the marrying party.

Q. The factum of marriage can be otherwise proved and as regards age the most accurate record will be the birth register where the age must have been given some 20 years back.

A. So long as these birth registers have not become perfect these marriage registers are necessary.

Q. Suppose these birth registers are absolutely accurate then is there any reason to keep these marriage registers?

A. They would further corroborate the evidence regarding age.

Q. But the person on whom there will be obligation to report will exactly be the person whom you want to prosecute and in 99 per cent. cases he would give the wrong age. There will be two conflicting entries in the birth register and the marriage register and instead of being a help the entry in marriage register may prove to be a hindrance.

A. But the age given at the time of marriage can be compared with the age in the birth register, and the man will think twice before he gives a wrong age.

Q. So that the reliable record will be the birth register and the marriage register will prove only the factum of marriage which is a notorious act and can be proved otherwise. What is the object of this marriage register?

A. Supposing a man marries the girl at 12 and the minimum age is fixed at 14, and the man gives the wrong age, it will be possible to find out the age. The age in the birth register can be tallied with the age in the marriage register. This will give some help in finding out the age.

Q. In your brotherhood do intercaste marriages take place?

A. There are no inter-caste marriages.

*Moulvi Muhammad Yakub* : What is the rate of infant mortality in your community? Is it much less than in other communities in Bombay?

A. Those communities in which marriages take place at an early age, for instance, the Marhattas, the Brahmins or the Vaishes, infant mortality is certainly greater than in the case of those where marriages take place late.

Q. Has your community made any advance in this direction?

A. Since we do not marry early there is necessarily less infant mortality. Our girls are healthy.

Q. Is there any difference in the ways of living of your community? I mean are your houses, etc., more lighted and ventilated? Are your hygienic surroundings better?

A. It is difficult to say. There is not much difference in the ways of living.

Q. What will be the effect on the relations between the husband and the wife if prosecution is launched by a wife against her husband or if prosecution is launched by the relations of the wife?

A. You cannot help it. If you want to make some advance in social matters you will have to take these difficulties.

Q. What would be the condition of the wife then whose husband is sent to jail? Will she not have to live a life of enforced widowhood when her husband will be living?

A. If the law is so amended, the practice of divorce will have to come in, because you cannot expect the husband to live with his wife on the same friendly terms when he comes back from prison.

Q. To avoid that state of affairs would you like to make the offence compoundable?

A. It will depend upon the seriousness of the offence. The offence should be made compoundable with the permission of the magistrate.

Q. Do you think the number of marital offences is so high as to warrant the appointment of the Director of Public Prosecutions?

A. In other communities these offences are more frequent but they do not come to light. In the Marhatta communities for instance consummation takes place before 13.

Q. What is the age at which consummation takes place among Marhattas?

A. 13.

Q. So according to the present law there is no breach. Are there any castes in which cohabitation takes place at an earlier age?

A. We have not considered it in that light. We have suggested an increase taking into consideration the health of the girl. At that age she suffers.

Q. What I mean is, is the number of cases so much as to justify the appointment of the Director or Public Prosecutions and incur all that expenditure?

A. When we raise the age, the number of men who will come under this law will be great.

Q. You have said that upto this time such cases are very rare.

A. They do not come to light. I will tell you a case I know of. In that case the girl was of about 13, she had not attained her puberty even. The husband insisted upon cohabitation. The case was brought to the court and the magistrate was rather sympathetic and ordered that the girl should not be sent to the husband for two more years. A bond was taken from him.

Q. But how many such cases occur daily?

A. It is true the number is not great. The girls require protection. They are considered to be a part of the chattel of the house.

Q. Do you mean to say that consummation with wives are common before 13?

A. I am not in a position to say that because it does not come to light. That is the difficulty.

Q. Why do you want to raise the Age of Consent?

A. In my opinion the Age of Consent and the age for marriage must be the same in the interests of the girl and in the interest of the Society.

*Dr. Beadon* : Have you come across girls who are affected physically on account of early motherhood, etc.?

A. Yes. These cases come to police court and we know by observation that after all she is a young girl, having a child. Not only she looks unhealthy but also looks anaemic.

Q. Are they not so in your community?

A. No. They are not so.

*Mrs. Nehru* : If woman police is not possible, would you still want to make it cognizable?

A. Yes. I want to make it cognizable.

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**Written Statement of Mr. I. S. HAJI, B.A., B.Sc. (Econ.), Lond., F.R.E.S., Bar-at-Law, Chowpatty Sea Face, Bombay No. 7.**

With reference to the Questionnaire, which you were so good enough to forward to me, I have the honour to submit the following as the written replies thereof:—

1. A little reference to the history of the amendment of the section 375, Indian Penal Code, will clearly show that since the year 1860, when the Indian Penal Code came into force, there has been some kind of dissatisfaction. By the Act X of 1891 the Age of Consent was raised to 12 years from 10 years. The experiences of 31 years amply proved that the age of 10 was too small for a female to realise all the consequences of sexual intercourse and that statistics of mortality abounded with appalling figures of death roll of girl-wives. However it could be seen from the Statement of the Objects and Reasons of the Act X of 1891 that the medical authorities were more responsible for the change of the law than any social or moral movement. The main reason given therein is as follows:—

“The limit at which the Age of Consent is now fixed (*i.e.*, ten years) favours the premature consummation by adult husbands of marriages with children who have not reached the age of puberty, and is thus, in the unanimous opinion of medical authorities, productive of grievous suffering and permanent injury to child-wives and a physical deterioration in the community to which they belong.”

From 1891 to 1925 when the Age of Consent was raised to 14, material and magnificent changes took place in this country. Legislatures and the Government began to be more representative of the people of the country, education began to spread from the urban to the rural parts of the land and finally a large portion of the population began to be more free socially, and social outlook by 1925 had become tolerant and broad. By the side of these changes the caste and communal panchayats also began to assert their voice in the protection of minor girls. Though they could not prevent early marriages yet they kept strict watch by means of caste rules for the prevention of consummation of marriage by adult husbands. Notwithstanding instances of the character of *Durree Mohun Mythee* (1890), 18 Cal. 49, wherein it was held that husband had no right to enjoy the person of his wife without regard to the question of safety to her and that of *Shambhu Khatri* (1924), 3 Pat., 410, where it was found that the accused, a youth of about eighteen, had, without any ancillary violence, sexual intercourse with a well-developed girl probably under twelve years of age without her consent and ruptured her vagina with the result that she died of shock, do occur now and then. However the amendment of the section in 1925 was not due to any social uproar or propaganda. Sir Hari Sing Gour, the greatest authority on this subject, in the Statement of Objects and Reasons to his Bill No. 12 of 1924 indicated the urgency of the amendment of raising the Age of Consent to 14 on the ground of protecting the minor girls. He did

not suggest any social dissatisfaction against the then Age of Consent. The following among the reasons given by him are equally weighty and important for the consideration of the question at the present day:—

“The necessity for protecting the minor children from illicit connection before maturity is obvious. Books on medical jurisprudence establish the fact that the age of puberty in India is attained by a girl upon her reaching the age of 14. Even though the puberty be reached at that age, it is obvious that girls are unfit for sexual cohabitation till they are older and more developed in physique and strength. The appalling infant mortality in the country is partially ascribed to early marriages and the consummation which follows with immature girls. It is, therefore, necessary not only for the protection of minor girls as also of their progeny that the Age of Consent should be raised to at least 14 years.....”

By the Act XXIX of 1925 this section 375 was once more amended, and the Age of Consent was thus raised to 14. However small the period that has passed since the last amendment yet the absence of any protest against that is very significant. It could, therefore, be safely concluded that there is no dissatisfaction against the raising of the age to 14. In this part of the country though there is no agitation against the last amendment yet a considerable portion of the people are able to realize the necessity of raising the Age of Consent to 16 both in the case of a stranger and husband. I cannot leave this aspect of the whole question without mentioning that the women of this city have expressed their great dissatisfaction at the absence of law preventing early marriages and at the existing low Age of Consent provided in the section 375, Indian Penal Code.

2. I do not see any reasonable and material circumstance justifying retaining the present Age of Consent. On the contrary, the reasons and grounds which actuated the Legislature to raise the age from 10 to 12 and then to 14 are still rampant and prevailing. Looking to the Census Report of 1921 females between the ages of 10 and 15 form considerably large proportion of the female population. Considering the prevalence of education which is exceedingly low amongst the females of these ages and their physique, I, for one, can say without any hesitation that a girl under 16 is not a competent person to realise all the consequences that ensue a sexual intercourse, and much less mentally efficient to give a consent to such intercourse. Thus mental inefficiency, lack of intellect and education, weak and infirm constitution and undeveloped physique of a girl of and under 16 are most important circumstances to raise the Age of Consent to 16.

3. The crimes of seduction and rape are not alarmingly frequent in this city. In the Calender of the Cases for trial at the Third Criminal Sessions which commenced at the Bombay High Court in the last month out of the total number of 35 cases there were two cases of attempt to rape; three cases of rape; one of kidnapping with abetment of rape and one of obtaining possession of minor girl for purposes of prostitution. It is, therefore, essential to enquire as to what are the motives for committing rape and seduction of minor girls. Before describing motives I may mention here that the books on medical jurisprudence and other statistics abundantly show that by far the largest number of victims of rape are the females under the age of 15. So far I have been able to find out that the largest number of the ravishers of females under and of 12 have been those who have invariably been suffering from some venereal disease, specially Gonorrhœa. The motive to rape such minor girls under 15 is based on the most absurd belief in the superstition that intercourse with a virgin is a cure for venereal disease. Lyon in his “Medical Jurisprudence for India” says as follows about that belief:—

“Young children are more frequently raped than adult women as they are less capable of offering resistance, and as in India the practice of infant marriage creates a desire for intercourse with immature girls. Besides an occasional motive for rape is the

old-world superstition, common both to India and Europe, that intercourse with a virgin is a cure for venereal disease, and the younger the girl the greater the probability of her being a virgin  
 .....

The Royal Commission in England on Venereal Diseases also took a serious note of this belief as a motive for rape. With the spread of education and adequate and cheap treatment now being available cases of rape on girls of tender age for this motive are now remarkably decreasing. The motive for cases of rape of girls between the ages of 12 and 16 is indeed difficult to determine, as prostitution being no offence in India, there is no obstacle to the availability of women for the lusty and the debauchee. In the slums and congested areas and amongst the people in whom the customs of early marriages prevail the average girl and boy under 16 are fully aware of the function of sexual intercourse. On account of the environments and the influence of the male over the girls under 14 and 16 some cases of rape under the law do take place. I have noticed in such cases the girl has been a consenting party and when detected she turns the table against the man by retracting consent or denying the fact of such a consent. I have also come across cases in which the parties have shown total ignorance of law. The tendency for such cases is on the decline as the people get educated. I would suggest that if the law is to be made more effective then it is desirable that it should be made known to the people through the caste and jamat panchayats—who in my opinion are the fittest bodies to diffuse such knowledge. Then comes the question of seduction of females for immoral purposes. The motive for seduction is apparently economic. The girls of poor parents or of low castes are generally the victims of this kind of crime. However, the Legislature has, therefore, enacted separate sections in the Indian Penal Code under the heading of Kidnapping and Abduction—*vide* sections 359 to 366 and 367. By the Act XX of 1923 the Legislature further added sections 366A and 366B to the Penal Code. By the former procuration of a girl under 18 years and by the later importation of a girl under 21 years has been made punishable. By the Act V of 1924 and Act XVIII of 1924 the provisions of the sections 372 and 373 of the Indian Penal Code are made very effective as they have brought a large number of females under the protection of persons other than the prostitutes and the brothel keepers. These sections have made selling or disposing of: Buying or obtaining, of a girl under 18 years for immoral purposes very severely punishable. Over and above these general provisions the Government of Bombay by the Act XI of 1923—An Act to consolidate and amend the law relating to prostitution in the city of Bombay—have penalised a male living on the earnings of prostitution: procuration of any woman or girl of any age: importing any woman or girl of any age: detaining of any woman or girl for illicit intercourse. Thus it would be seen that the Legislature has placed all safeguards for the protection of minor girls. Owing to the working of the Prostitution Act a large number of cases of minor girls procured for prostitution have come to light and the more such girls and such procurers are detected the greater would be the number of such cases. I would, therefore, submit that if any increase is marked in the number of cases of seduction it should not be attributed in any way to the raising of the age from 12 to 14.

4. Owing to the illiteracy in the country and the firm foundation in the ancient beliefs and customs very few husbands now know the changes that have taken place in the law. If the parties could appreciate the advantages of postponing the consummation they would certainly postpone the very celebration of the marriage—which in the opinion of the most is a complete sanction to exercise all the sovereign rights over the wife irrespective of her age. So far I am not aware of any movement stimulating a public opinion to educate the husband to postpone the consummation of the marriage till his wife is 13 years old. However I do feel that in course of time when such cases of technical rapes—which would be detected with great difficulty—are brought to light and tried before the Court the caste and jamat panchayats would rise to the occasion and make rules prohibiting marriages before the 13th year or the 16th year as may hereafter be fixed. As only

such cases where consummation of marriage has resulted in some serious injuries to a tender wife are detectable immediately and those cases in which the consequences of early consummation only manifest at or after the child-birth the most effective method to protect a minor girl is to prohibit an early marriage. I would therefore suggest that the Indian Penal Code should be so amended as to punish the husband carrying a girl under 13 or 16 as the age may hereafter be fixed and also punish those who knowingly celebrate marriage of such a minor girl.

5. A medical man would be in a better position than myself to speak on the subject of the age of puberty. The observations made by the medical officials and the writers on medical jurisprudence do show that the largest number of the girls between the ages of 13 and 16 begin to menstruate at these ages. According to the Muhammadans puberty is presumed, in the absence of evidence, on completion of the age of 15 years (*vide* Mulla's "Principles of Mahomedan Law", 7th Ed., p. 164). Lyon in his Medical Jurisprudence states that the appearance of menstruation "is seldom delayed beyond the fifteenth year." Minority, according to the Mitakshara school, terminates on the completion of the sixteenth year; and according to the Bengal school on the completion of the fifteenth year. I am sure these two great schools of thought must have taken the age of puberty in its utmost consideration for the determination of the age of minority. The statistics in the books on the Medical Jurisprudence show that the largest number of the European girls menstruate between the ages of 13 and 16. It is also said that the influence of tropical climate does bring about earlier menstruation. Besides social customs and habits and the low standard of living facilitate children to gain precocious knowledge of sexual matters and excitement whereby menstruation makes its appearance earlier. Taking all these aspects of the question into consideration I am of opinion that the girls attain puberty at the age of 15 or on its completion.

6. Cohabitation with girls either before or after puberty is not common in this city. The cases of such nature do mostly come under detection and they are tried as cases of rape. I have already dealt with this point in the reply to the question No. 3. It is very seldom cases of cohabitation by husband with a wife under 13 come to the Court. The reason as said above is due to the difficulty to detect and that only such cases in which serious injury has ensued come to be detected through the help of the medical attendant.

7. So far I am not aware of any religious authority imposing either on males or females consummation of marriage before or at puberty.

8. "Gaona" or "Garbhadan" ceremony as far as my information goes is not known in my community and therefore I am not in a position to discuss its different aspects.

9. No. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. As the age of puberty varies with individuals it becomes difficult to prescribe any fixed age which can be said as the age of full development and of least danger for consummation. If the medical opinion fixes the age of puberty to 15 then I submit that at the age of 16 a girl can be taken as physically developed to undertake all the responsibilities which follow consummation without impairing either her own health or that of her progeny.

10. Taking into consideration the present state of education amongst the masses in India, the physical development of an average girl, the social customs and habits, I am of opinion that at the age of 16 an average Indian girl is intelligent enough to realise all the consequences which arise on or after cohabitation. I therefore submit any consent without that intelligence to realise the consequences is not a valid consent. The law in other matters does not recognise consent given by any minor under 18. Why should law hold cohabitation as a matter of little consequence. When the law provides certain checks for the protection of the minor's (under 18) property and rights to contract it should also secure protection of the person of the minor by

raising the Age of Consent to at least 16 when a female should be deemed to have realised all the consequences of sexual intercourse.

11. No. I have not come across such a case at present. The cases of the character of the one known as *Queen-Empress, v. Hurry Mohan Mythee*, 18 Cal., 49, are indeed very rare. I know of one case which was tried in the first Criminal Sessions of the Bombay High Court, 1928, in which a Madrassi husband had raped his minor wife under the age of 13. As far as my memory goes the girl-wife had not attained her puberty.

12. Yes. When the vitality of the mother is weak and feeble one would hardly expect her progeny strong and healthy. The old saying "The hand that rocks the cradle rules the world" implies nothing more than the truth that the intellectual and physical progress of the people mostly depends upon the mother. Early consummation deprives the girl of opportunities to develop her intellectual powers and early maternity wrecks her physical constitution on which the hope of the family and the nation rests.

13. I must confess that since the amendment of 1925 I have not heard of any movement to organise the public opinion either against the amendment or for the raising of the age a little further. However I would not wait and see till the public opinion has been formed for the Government or the Legislature to amend the law. The whole question should be looked with the point of view of the females and their physical developments. I think it is one of the greatest responsibilities of the Legislature to protect the person of minor females both from their husbands and the strangers.

14. I think the real desire and craving for children a woman gets not before the age of 16 but about the age of 18 when she is fully cognisant with the marital responsibilities. The more the knowledge of the dangers of early maternity is spread over the country the less the women would favour the early consummation of marriage—if there is any.

15. Yes. In most of the cases where a minor girl was concerned the Court experienced great difficulties in determination of her age. Where no age certificate could be obtained the Court had to rely upon the evidence of the doctor. While on this subject I feel it very essential to draw your attention to the remarks of the most energetic and experienced Police Surgeon of this city, Major William Nunan, M.D., I.M.S., in his valuable book "Lectures in Medical Jurisprudence", pp. 19—20, and in his article in the British Medical Journal, Saturday, 23rd January 1926, in which he says as follows:—

"I find myself, after many years of patient investigation, while not at all decrying the great usefulness of X-ray examinations in this connection (determination of the ages of the minors), at a loss to discover tables of statistics, Oriental or Occidental, on which to pin my wavering faith....."

When the experts come with a piece of evidence with full of doubts to themselves they would only make confusion in the Court more confounded. I would, therefore, suggest that an X-Ray Bureau be opened to collect statistics and formulate a table or tables of figures and ages for the guidance of the Court. I would also suggest that when a birth of a girl or boy is registered at the Registration Office the recording clerk should be made to write after questioning the informing party whether it is the first or second (or so on) child or the first or second boy or girl. This would enable the Court to fix up the identity of the child for the register, does not contain the names.

16. No. The machinery for registration of the age and the methods to determine the ages having remained the same the difficulty of determining the ages would neither be reduced nor increased if the Age of Consent is raised to 14, 15 or 16.

17. Of course extra-marital offences should be severely punished. The present law prescribing the punishment is in my opinion quite adequate.

18. The extra-marital offences should be exclusively tried by the Court of Sessions as they should be severely punished. I think marital offences should



not be made triable also by the Sessions Court. Offences of this character stand on different footing and therefore they should not be made punishable severely. I think a Presidency Magistrate or the Magistrate of the First Class is quite competent to try such cases and punish adequately.

19. The present safeguards as to false prosecution and extortion are quite adequate. But as regards the collusion of the husband with the parents of the girl-wife the only important safeguard I am able to suggest is through the instrumentality of the medical man who is called upon to treat the injured girl-wife. This could be done by the Medical Union by enforcing the doctors to report such cases to the Police and failure to do so should be deemed as professional misconduct.

20. On the sentimental grounds the public opinion would be on the side of raising the Age of Consent for marital cases. The conservatively inclined people and those who are orthodox would resent any legislation towards the fixing of the minimum age of marriage. On account of the ignorance of the people I would suggest that if the Age of Consent even in the marital cases is raised it should properly be made known to the people through the caste and jamat panchayats.

21. As the Age of Consent has great deal to do with the protection of the person of the minor girls and the improvement of the future generation I would not leave the matter for the social reformists or educationists or to the social propaganda. It is primarily the function of the State and the State should promulgate such laws—penal or otherwise—for the protection of the minors and girl-wives. If it is found that the interest of the nation require fixing the minimum age of marriage I would suggest that the minimum age of marriage in case of the boy should also be fixed. If the minimum age of the girl is fixed to the 16th year I would fix 18 as that of the boy. Under these circumstances I would suggest the amendment of the Indian Penal Code by adding a new section, *e.g.*, "375A" and it should be worded as follows:—

"Whoever, either under or above age of 18 years, has sexual intercourse with his own wife, the wife being under sixteen years of age, shall be punished with imprisonment of either description which may extend to 7 years or with fine or with both."

This section penalises early marriage on part of the husband and also protects the girl-wife against the marital cohabitation when the wife is under 16 years of age. This wording of the section, it would be seen, does not necessarily prescribe the minimum age of marriage but it automatically controls marriage of a boy under 18 and with a girl below 16. Lastly the wording of the section in my humble opinion does not in any way offend any religion.

If your committee desire to examine me orally I would certainly be very willing to appear before the Committee at any place and date as may be found convenient to the Committee.

In conclusion I thank you very much for having sent me the questionnaire whereby you have enabled me to render a modest and humble service to my people.

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**Oral Evidence of Mr. I. S. HAJI, B.A., B.Sc. (Econ.), Lond.,  
F.R.E.S., Bar-at-Law, Bombay.**

(Bombay, 26th October 1928.)

*Chairman:* For how many years have you been at the Bar?

A. I have been nearly for ten years.

Q. Are you connected with any Social Reform Institutions amongst the Mahomedans or other castes?

A. I was the member of the 1st Reform Council and then I have been the President of the Young Mahomedan Association and at present I am one of

the 12 members of the Jamat Panchayat of Aga Khan's followers. I belong to the Shia Community.

Q. At what age does the consummation ceremony take place amongst Mahomedans? Does it take place before puberty?

A. When I speak very correctly, I say the Mahomedan law prohibits the consummation of marriage before puberty and that generally not before the 15th year and so therefore if any marriage is celebrated prior to the 15th year, the consummation is delayed till the age of puberty is arrived and after certain ceremonies the consummation of marriage takes place. I would, therefore, say that generally it takes place at the age of 15 to 16.

Q. Do you know of any class of Mahomedans amongst whom the consummation of marriage takes place before 13?

A. At least it is not in my community. So far, as in my practice of ten years I have not come across a single case in which the Mahomedan party was involved but have come across a couple of cases in Hindus.

Q. Have you reason to believe that there are cases of a breach of the law of the Age of Consent that is to say below 13?

A. Yes.

Q. Are they very difficult to detect?

A. Yes.

Q. If you however admit that there are a large number of cases that do occur but they are difficult to detect and as such very few cases come to Court, then may it not be that it has not affected the practice of the people adversely and therefore there is no ground for a protest?

A. I think the best answer to give to that part of the question would be that the cases not being brought to light, there has not been an organized protest though in the community in which such victim has been found but there may have been some resentment; but the protest looking to its general meaning means an organized protest. Therefore there is no occasion for making a protest organized or otherwise.

Q. Actually the practice under 13 has never adversely affected the people. So people are not affected. But if you raise the age to 14, will they be affected?

A. Even if the age is raised to 14, 15 or 16, there wouldn't be a protest but resentment because after all the people do realise when any change is done in the law raising the Age of Consent.

Q. Are you in favour of legislation for fixing the age of marriage and penalizing it?

A. I say that there should not be a special penal section to fix a particular age for marriage, but if the Age of Consent is raised and certain privileges are accorded both to the husband and the stranger alike, I think, the object of fixing the age for the purpose of marriage would be gained. I advocate the raising the Age of Consent to 16 both, in the case of the stranger and the husband.

Q. Do you think that in each province where people do not go to Court even now the most powerful motive in the girl or in the girl's parents not to disclose such facts, is the scandal connected with it.

A. Yes. That is the motive.

Q. Now we have the age at 13 and if we adopt your suggestion, viz., 16, will not the same motive remain on?

A. Then there will not be any danger to the girl and there will be no question of reporting to the Police if the Age of Consent is raised to 16.

Q. Do you want both of them to be penalized?

A. I want both to be penalized in the same section. The people having known this law cannot consummate the marriage till 16. So they will not celebrate the marriage at 12 or 13.

Q. Do you want to make this offence cognizable or non-cognizable?

A. I want to make the offence a cognizable one. I want the police to have the powers to enquire in order to bring to light, these cases.

Q. But there is a preponderance of evidence before this Committee not to make it cognizable.

A. But I want to make it cognizable and this will secure more chances of detection.

Q. What is your objection to a law penalizing the marriages below a certain age?

A. I have several objections, and they are based on sentimental grounds. The Mahomedan community which is not advanced will kick up the hell of a row if they know that any legislation fixing the age has been passed.

Q. Supposing we adopt your suggestion, viz., fixing the age at 16, still a husband breaking the law before 16, will be liable to the self-same danger of going to jail.

A. The punishment will be in proportion to the age of the girl and the proportion will be in the discretion of the Magistrate.

Mr. Kanhaya Lal: You recommend the offence to be made cognizable.

A. Yes.

Q. Would you like the investigation into marital cases to be made by Gazetted Officers?

A. I would allow it to be made by the Inspector of Police. I think the Inspector will do because the higher authorities have hardly any time. An Inspector can be trusted.

Q. Is a preliminary enquiry necessary, before issuing a summons or notice or warrant to the accused.

A. Yes. I would like it.

Q. For marital cases do you want to make this compulsory?

A. Exactly. I want to make it quite compulsory.

Q. Would you prefer it instead of ordinary courts to having a matrimonial court consisting of a magistrate and two non-officials for the trial of these marital cases?

A. I think the proposal is very good but the Government finances wouldn't permit.

Q. Suppose we have honorary persons for these courts, would that not inspire greater confidence?

A. I think the confidence would be there even with a single Magistrate. I would recommend a bench of three Judges, namely, one Magistrate and two non-officials in each district.

Q. Do you expect that in the mofussil too, two honorary judges would be available to help to form a tribunal?

A. Two respectable persons of the locality can sit with the Magistrate of that place and form a tribunal.

Q. Do you think that you will get suitable persons for this purpose?

A. Yes. I think so.

Q. Another suggestion has been made that all marriages should be registered? Will it help in bringing cases to light?

A. As a matter of fact in our community every marriage is registered. Of course, we keep a caste register of marriages. So also I think there should be a register with each caste panchayats or jamats.

Q. What is wanted is a public register for the whole of India open to inspection and not only for one community. To whom would you entrust this duty?

A. I would like to entrust the duty to the Municipality or to the Taluk Board and the Municipal Act should be so amended. The registration should be made compulsory.

Q. Are you in favour of starting Vigilance Associations or caste panchayats.

A. No. I would not be in favour of Vigilance Associations for there are already caste panchayats existing and they are sufficient enough to file complaints if the parents fail to register the marriages.

Q. Would you make a marital offence compoundable?

A. Yes. If it is made compoundable, there is every possibility of restoring good feeling.

Q. In case of severe injury?

A. It should be left to the Court. I would make every marital offence compoundable irrespective of the age of the girl.

Q. As regards the registration of births you have suggested that when the birth of a girl or boy is registered the record clerk should be made to write after ascertaining from the party concerned whether it is the first or second child or the birth order. Would it not be better to take a supplementary report?

A. Yes. It will be a greater safeguard as far as the identity is concerned.

Q. Are cases of rape, kidnapping, etc., not frequent in this part of the country?

A. No. They are not frequent.

Q. Is there not a very large number of brothels and a very large number of prostitutes and women of bad character in the city?

A. Yes. It is true, and there are a very large number of girls who are imported.

Q. Is it not desirable to extend greater protection to tender girls against kidnapping and rape?

A. Yes. The Bombay Government has enacted the Prostitution Act to extend protection to these girls.

Q. Would you like to make 18 the common age for protection against offences of this character.

A. I would have no objection to this.

Q. So would you like to bring these sections into harmony by fixing a common age?

A. I would; I am in favour of 18.

Mr. Kadri: Do you think that there will be no resentment amongst the Mahomedan people by the age being raised to 16 as suggested by you?

A. I don't think so. As a matter of fact, amongst the Mahomedans marriages are always consummated after 16, and if the Committee makes out a very good case that the Age of Consent be raised to 16, I am sure every Indian will rise to the occasion for the betterment of the country and accept the same.

Q. At what age amongst the khojas and memons do marriages take place?

A. The marriage may be celebrated earlier but the consummation takes place after 15th or 16th year.

Q. Are you acquainted with the Moghuls?

A. Yes. I think the communities would perhaps resent any new legislation fixing the marriageable age because the marriage celebration is considered as a sort of sentimental gratification by parents before they are dead. That doesn't mean there should be consummation.

Q. Do you think that there are many cases of breach of the law of the Age of Consent as at present existing?

A. Of course, many cases do occur; but very few cases come to the Court.

Q. Do you think it is necessary to have a special tribunal for the trial of offences within marital relations?

A. Yes. Then alone, more cases will come to light.

Q. Do you realize that the present punishment is only two years in the case of a wife who is above 12 and under 13? Do you think this as adequate or would you recommend any change therein.

A. I would leave it to the discretion of the Magistrate; but that should be the maximum punishment.

Q. Would you advise whipping in these cases?

A. No.

Mr. Bhargava: I understand from your reply that you are personally in favour of a marriage law. Is it for all communities without exception?

A. I would like to correct myself by saying that there should not be a marriage legislation.

Q. Do you want to make an offence in marital case cognizable or non-cognizable?

Q. Yes. I want to make it cognizable, because then alone there will be many cases forthcoming to the court.

Q. You are penalising the husband if he is below a certain age. Supposing there is a man of 40, he does not come under the law.

A. Then in that case you will have to take steps to penalise the marriage of an elderly person with a young girl.

Q. What steps would you suggest to stop early marriage which automatically leads to early consummation?

A. I think raising of the Age of Consent would do it. I am not for fixing the marriageable age.

Q. Do you think that if the Age of Consent is raised to 16 the chances of early consummation would be immeasurably less?

A. Yes; as suggested by my friend, if the offence is made cognisable the chances would be less.

Chairman: In para. 4 you say that "the most effective method to protect a minor girl is to prohibit an early marriage. I would, therefore, suggest that the Indian Penal Code should be so amended as to punish the husband marrying a girl under 13 or 16 as the age may hereafter be fixed and also punish those who knowingly celebrate marriage of such a girl". And then in the last paragraph you say that the interests of the nation require that the minimum age of marriage should be fixed". But in the actual amendment proposed you are dealing with the Age of Consent. How do you reconcile the two?

A. I think, and I felt at the time, that fixing the age of marriage and fixing the Age of Consent were identical, because nobody would have marriage without consummating.

Q. But by having a law for consummation, marriages below a certain age cannot be stopped.

A. The whole question is that if you have such marriage laws whether there would be public opposition or not. I am putting forth this suggestion on the grounds of least resistance.

Maulvi Muhammad Yakub: May I know to what community you belong?

A. Khoja community.

Q. What is the population of your community?

A. We are about 10,000 in Bombay; and all over India the population would be about 50,000.

Q. What law do you follow as regards marriage and other things?

A. The Shia law of marriage.

Q. You have told us that according to Muhammadan Law consummation cannot take place before the girl has reached puberty.

A. It is the practice amongst Muhammadans.

Q. Can you give us some authority from Muslim Law? Can you quote any book on Shia law which you follow or can you quote any other authority to show that marriage or consummation should not take place before puberty?

A. I cannot.

Q. You say that 15 is the age of puberty. What is your authority for saying that?

A. Mulla is a well-known authority on Muhammadan law, and his authority has been accepted after very great research. He says that puberty is presumed in the absence of evidence to be complete at the age of 15.

Q. You say that in practice amongst Muhammadans marriages do not take place before the girl has attained puberty. You fix the age of consummation at 15. Supposing a girl reached puberty at the age of 13 or 14, would you allow consummation of marriage at that age or not?

A. I would have a general age fixed for consummation of marriage.

Q. The age of puberty is fixed at 15 only in the absence of evidence. Generally puberty in India takes place between 13 and 14 and if that is evident enough you cannot say that puberty commences at 15. Has any body ever suggested that the age of puberty is 15 in India?

A. I have got Lyons' medical jurisprudence in my support that the age is 15. There are cases where puberty is reached earlier. But in a majority of cases it is reached later.

Q. Can you quote it?

A. He says that puberty is seldom delayed beyond the 15th year.

Q. It means that puberty begins before 14. Then how do you fix the age of consummation at 15 when you say that according to the custom of the Mussalmans consummation takes place and puberty begins between 12 and 14?

A. We should not take individual cases to make generalisations.

Q. Your suggestion that puberty is the time when consummation should take place, will then fixing the Age of Consent at the age of 15 be right?

A. What I have suggested is that if the age of puberty is 15.

Q. If it is not 15?

A. Then, I would fix the age of consummation at 15 irrespective of puberty.

Q. Have you read any original book on Muslim Law?

A. No; I have not read original texts.

Q. You say that in your community there are Jamats and they register marriages. Can you tell us something about the constitution of these Jamats and their functions?

A. In our community the Jamat is nominated by the Aga Khan both in the cities and in the villages. We are 12 members in the city of Bombay who form the Jamat.

Q. How are the Jamats financed?

A. They are financed by the Aga Khan from his own pocket, and he can spend any amount he likes.

Q. What is the system of registration of marriages here?

A. The Mnkhi or the Kamaria is the officer who looks after the Jamat funds. He is also the officer who is in charge of the registration of marriages.

Q. In how many places have you got these Jamats?

A. In Bombay, Karachi, Hyderabad, Surat, Calcutta. and other places. There are more than a dozen of them.

Q. What are the columns provided in the marriage registers?

A. The name and age of the bride and bridegroom and other particulars. Sometimes the amount of the dowry is also mentioned.

Q. What is the penalty for breach of this law? Supposing a marriage is not recorded, what is the penalty imposed?

A. I do not know that. The registration is not compulsory but it is invariably done. The Mukhis take care to see that the marriages are registered. I do not know of any cases in which marriages had not been registered.

Q. You say that in marital cases the punishment may extend to imprisonment for 7 years or fine or both. And in para. 17 you say that extra-marital cases should be severely punished. If you give 7 years for marital offences what punishment would you give for extra-marital cases?

A. On reconsideration I am prepared to modify it and put the punishment in marital cases at 5 years.

Q. Do you know that under Muhammadan law, after the wife has attained puberty, the husband has every right to have intercourse with her?

A. Yes; but there is no compulsion.

Q. And in this law you penalise that right. Is it not interfering with the Muhammadan law?

A. The law does not say that a husband shall have consummation as soon as the girl attains puberty. It is only permissive.

Q. The law has given the right and you are taking away that right.

A. I am only postponing the exercise of that right.

Q. Is it not interfering with religion?

A. If you look at it with narrow-mindedness or sentimentally it is an interference even if the Age of Consent is fixed at 10.

Q. You say that the marital cases should not be triable in a Session Court. At the same time you say that the punishment to be awarded should be 7 years. How can a magistrate give a punishment of 7 years?

A. Therefore I said that the punishment should be 2 years. I also said that the offence should be a compoundable offence.

Mr. Mitra: Are you against social legislation such as the marriage law on principle or on questions of expediency?

A. On questions of expediency as well as principle. I want to proceed on the lines of least resistance.

Q. Are you not in principle against all sorts of social legislation?

A. Most of these legislations are the outcome of the social agitation and they are social legislations.

Q. Therefore you are not on principle against all social legislations?

A. No.

Q. Is there anything in the Muhammadan law fixing the age of marriage?

A. No.

Q. You say that orthodox people would resent legislation fixing the age of marriage. If there is nothing in the Muhammadan Law as regards marriage where is the cause for resentment amongst them? You said in answer to Maulvi Sahab that though the law of the Age of Consent restricts the liberties of the people it will not be resented. How do you reconcile these two?

A. It is open to a Muhammadan to marry. It is open to him to marry a girl of any age. If you pass a legislation saying that a man cannot marry a girl below a certain age it would be interference?

Q. Is it not so in the case of the consummation of marriage age also?

A. No; marriage is one thing and consummation is another. Since Muhammadans have yielded to the raising of the age from 10 to 12 and from 12 to 13 opposition to the Age of Consent Act would be meaningless.

Q. Supposing there is a law enacted restricting people to monogamy, would you resent such a law on principle?

A. I would resent it on sentimental grounds.

Q. You do not think therefore that there is anything religious in the opposition to the Age of Consent.

A. No.

Q. Can you tell us at what age the Prophet married Ayesha?

A. No; I cannot say; my answer would only be hearsay.

Q. You refer to the case of a Madrassi husband who had raped his minor wife under the age of 13. To what community did he belong?

A. I do not know the caste. The case went to the High Court. The girl was under 13.

*Mr. Mudaliyar:* You say that the Medical Unions might be asked to force the doctors to report the cases of infringement under the Age of Consent Law and failure to do so on the part of the doctors should be deemed as professional misconduct. That would only apply to registered medical practitioners. Supposing these cases are treated by Ayurvedic or Unani doctors, how will you compel them to take cases to the court?

A. If you say that any medical man should be compelled instead of saying any registered medical practitioner then all doctors will be compelled to report cases.

Q. In that case there will be no question of professional misconduct. There should be some other punishment.

A. You can fine them just as you fine the ordinary doctors who are punished under the ordinary laws for failure to report such cases.

*Mrs. Nehru:* In para. 1 of your statement you say that the caste and communal panchayats, though they could not prevent early marriages, yet kept watch by means of caste rules for the prevention of consummation of marriage by adult husbands. Do you mean to say that though there were early marriages consummation of marriages took place later than at present?

A. Yes; I can quote several instances; even recently I came across one such case. The marriage took place three years ago and yet the wife is still in the house of her parents. The husband has resorted to the court for wrongful confinement of the wife by her parents. In that case I found that the caste panchayats would not permit the consummation of marriage till the girl reached puberty. The girl was under 14 years and she was a Muhammadan. The case is pending in the Court.

Q. Was that a stray case?

A. Yes.

Q. Generally, do you think that consummation nowadays is later than it used to be?

A. Now consummation is more delayed than formerly.

Q. In para. 3 you have said that in the last month out of 35 cases you had in the Bombay High Court there were three cases of rape, one of kidnapping with abetment of rape and one of obtaining possession of minor girl for purposes of prostitution. Can you give us the ages of these girls and their caste?

A. No; I cannot.

Q. Did you merely read about them?

A. No; I was in the Sessions Court. In one of the cases I defended the accused.

Q. What was the result of that case?

A. The accused got convicted for five years.

Q. Considering the harassment that would be caused by making the marital offences cognisable by the police, would you not recommend that the Jamat Panchayats should be given the power of complaint?

A. The Panchayat would be as reluctant to complaint as any individual member of the Jamat.

Q. Do you think that the power of complaint can be given to the Caste Panchayats?



A. In the Caste Panchayats as they are composed at present, there would be division, and people will take the side of either parties. More often they would not resort to the Courts with complaints unless they are compelled which I submit would be a difficult thing.

Q. You oppose the fixing of the marriage age because you fear that Muhammadans would be against it. What reasons have you to believe that they will be against it?

A. Because they believe they can marry at any age and that Government should not fix the age.

Q. Have they at any time given expression to their views?

A. Not so far; but it is my fear that they will oppose it.

Q. Is your personal conviction against it?

A. No; on the other hand, I think, that it is for the good of the society that there should be a law like that. All that I want is that it should be on the lines of least resistance.

Q. Is there anything to show that people would oppose this law?

A. The moment you submit your report recommending such a measure opposition would arise.

*Dr. Beadon:* You say that the Medical Union should compel the doctors to complain of the cases of breach of the law to the police. Do you not think that in such cases people might not take such cases to the doctors at all and the girls would suffer because they will not have medical attendance? Doctors may refuse such cases, and the parents and relations also might not take such cases to doctors, and there is the danger that the girl may not get any treatment at all.

A. If the case is made cognisable this danger would disappear, because as soon as the police takes the case in hand they will send the girl to some hospital for treatment. At the same time there will be danger in case the offence is not brought to light.

**Written Statement, dated the 15th August 1928, of Mr. MAKANJI J. MEHTA, B.A., LL.B., Bar-at-Law, Honorary Secretary, Bombay Mangrol Jain Sabha.**

1. So far as I have been able to ascertain there is no dissatisfaction with the state of law as to the age of consent as containing in sections 375 and 376 of the Indian Penal Code.

2. I think it is advisable to raise the age of consent to 16 years for the protection of girls. I think that if a woman is not married she would not be able to understand the nature or the consequences of sexual intercourse till she attains about 18 years of age. It is possible to conceive of cases where a woman's consent may be obtained to sexual intercourse by certain representations which may not come within the terms of clauses 3 and 4 of section 375.

3. So far as I can say crimes of seduction or rape are not frequent in our part of the country. I do not think the amendment of law in the year 1925 has really succeeded in preventing or reducing cases of rape outside the married state or the improper seduction of girls for immoral purposes. As a measure I should propose that the persons guilty of such offences should be punished by whipping publicly where such offences are generally committed. Such a step would deter other persons who are habituated or inclined to commit such an offence.

4. I think cases of cohabitation with husband within the prescribed age limit are rare. I do not think the amendment has really any effect by way of postponing the consummation of marriage or by stimulating public opin-

ion in that direction or by putting off marriage beyond 13. I do not think any effort has been made to bring the said amendment to the notice of the general public. It is impossible to expect that such an amendment would ever have any effect unless steps are taken to make the amendment and its effect known to the general public. The proper course appears to me would be to diffuse knowledge on the subject to general public. The next thing is Sarda's Bill which if passed into an Act would have the effect controlling marriage below 14 and 18 years for girls and boys respectively.

5. The usual age at which girls attain puberty in our part of the country is between 13 and 14. There does not seem to be much difference as regards different castes, communities and societies.

6. Before puberty, cohabitation is not common. After puberty, in case of married people, yes. Such cases rarely come to Court.

7. No. There is no religious injunction as regards the practice of early consummation of marriage.

8. I am not aware that Guibhadan ceremony is usually performed on our side.

9. I do not think that menstruation is a sufficient indication of physical maturity to justify consummation of marriage. Generally 'sixteen' is the age justifiable for sexual intercourse and in most cases it is two or three years after the attainment of puberty that development is reached. But for progeny, 18 years is the time for taking up the duties and responsibilities of motherhood.

10. Cohabitation before full physical development of the girl is mainly responsible for permanent injury to her vital organs and impairment of her general health and consequential weak progeny in India; and pregnancy and delivery before that stage take good many girls to early graves.

11. Cannot give any instances.

12. Early maternity may to a certain extent be responsible for high maternal and infantile mortality. The real cause of maternal and infantile mortality is, in my opinion, due to the lack of sanitary and well ventilated dwelling houses, proper clothing and education.

13. Yes, but only among educated and upper classes.

14. No.

15. The age of girls is a question of fact which has to be proved by evidence. I do not think any measure can be suggested to remove or minimise the difficulties of proving the age. There are registers of births and vaccination from which certificates could be obtained to prove the age. The best way is for the Government to see that proper and complete records of births be kept by Government from which the age of girls can be proved by procuring certificates from the said records.

16. I do not think.

17. I think Exception to section 375 should be deleted. By the proposed amendment to section 376 the penalty should be inflicted on the person who has sexual intercourse with his wife, the wife being under 14 years of age.

18. The trial of offences within and without the marital state should generally not be in the open Court. As regards the offences within marital state it is and should be treated as a summons case.

19. I suggest that for the protection of the accused and to safeguard against improper prosecution or extortion the offence of rape should be entrusted for investigation to officers not lower the rank of a Police Inspector.

20. I think the legislation fixing the minimum age of marriage would be more effective than the penal legislation, and would also be in consonance with public opinion.

21. I do not think penal law would secure the object in view. Adequate legislation in proper direction would help the progress of social reform.

**(Oral Evidence of Mr. MAKANJI J. MEHTA, Bar.-at-Law, Honorary Secretary, Bombay Mangrol Jain Sabha, Bombay.**

*(Bombay, 26th October 1928.)*

*Chairman:* How long have you been Honorary Secretary of the Sabha?

A. For the past 12 years.

Q. What is the membership of your Sabha?

A. It is about 200.

Q. Is the opinion contained in the memorandum the opinion of your Sabha?

A. The Managing Committee of the Sabha considered and approved the memorandum.

I was also Secretary of the Jain Svetambar Conference for 10 years.

Q. Has that conference passed any resolution on the subject?

A. The conference hold their sessions every year and they have passed resolutions prohibiting early marriage but no age limit has been fixed. I remember when the conference was held in Bhavanagar in 1900 they passed a resolution fixing the age of marriage of girls at 13 and boys at 18. Since then no resolution has been passed fixing the age of marriage, but resolutions have been passed asking the public not to have early marriages.

Q. How far have these resolutions been honoured in practice?

A. So far as I know the resolutions have been given effect to in some cases. Public opinion has been cultivated and early marriages are not now so common as they used to be.

Q. Can you tell us what the marriage age was 20 years ago and what it is now?

A. 20 years ago it was 12 and 13. Now it is 13, 14 and 15. 13 is also getting rare.

Q. Amongst Jains are there a large number of widowers who marry young girls?

A. There are such cases, but I cannot say whether their number is very large or not. We have also passed resolutions on the subject.

Q. Do you think that in these cases there is danger of early cohabitation before the girls is 15 for instance?

A. There might be danger in some cases. But whenever old men marry young girls they always like to have grown-up girls say at the age of 14 or 15.

Q. Where widowers marry girls who are very young are there risks of the girls becoming mothers below 15?

A. There are risks.

Q. Do you know of any cases?

A. I do not know.

Q. In your answer to question 9 you say that 18 is the age for safe motherhood. Is that correct?

A. Yes.

Q. When do you think girls can give intelligent consent for cohabitation?

A. I would put 16 as the minimum.

Q. Would you have the same age both inside and outside marriage?

A. I think outside marriage it ought to be more. I would have age at 18.

Q. In paragraph 2 you say that a woman who is not married would not be able to understand the nature or the consequences of sexual intercourse till she is 18. Do you mean to say that within marriage she would understand the consequences at 16?

A. It does mean that, and I have got reasons for that.

*Q.* You say that it is possible to conceive of cases where a woman's consent may be obtained to sexual intercourse by certain representations which may not come within the terms of clauses 3 and 4 of section 375. What are those circumstances?

*A.* I have in mind the case of a Sadhu who seduced a woman saying that in his prior birth he was the King of Nepal and she was his Queen. I am referring to cases of spiritual terror like that. I think they are not covered by clauses 3 and 4 of the section.

*Q.* Do you want the age of consent law to be given larger publicity than at present?

*A.* Yes.

*Q.* Have you reason to believe that there are a large number of cases both amongst Jains and outside Jains where the law has been violated?

*A.* I do not think there are a large number of cases.

*Q.* In paragraph 20 you say that you would rather have a marriage law than the age of consent law. Do you think that the law fixing the age of marriage would be more effective?

*A.* Yes; I want a Civil law and not an addition to the existing penal laws.

*Q.* The law fixing the age for marriages would also be penal in the sense that offenders would be penalised for infringement of the law. Would you prefer that?

*A.* I would. I would also fix the age for girls at 16 and boys at 18 to 21.

*Q.* If we fix the age of marriage of girls at 16 by law, would it not militate against the sentiments of a large number of orthodox people?

*A.* The orthodox people would not like. But so far as we Jains are concerned, we do not think that marriage after puberty is a sin.

*Q.* Have you remarriage of widows in your community?

*A.* Amongst certain sections of the community there are remarriages, but not amongst all.

*Q.* You say that raising the age of consent would be in consonance with public opinion. Do you think there will be no opposition to the measure?

*A.* As for the age of consent you may for the present raise it to 14 and after 4 or 5 years you can raise it to 16. People will not care. Cases of rape are even now very rare and so far as husband and wife are concerned, we have not heard of cases at all. It is very difficult to find out such cases.

*Q.* What would you put that to?

*A.* People would not like to go to courts. But if you prohibit marriage by a Civil law and make the age 14, it would be more effective in the long run.

*Q.* Do you suggest that as a first step you would fix 14?

*A.* Yes; 14 for girls and 18 for boys.

There is another point which I would like to mention. If you fix the age of consent at 15 or 16, there might be people from the Indian States who have had marriage at 13 or 14 and who might have consummation below the age fixed in British India. There will therefore be some difficulty in such cases. But if you fix the age of marriage as in Sarda's Bill, it will create public opinion in the Indian States also. Merely raising the age of consent to 15 or 16 in the Penal Code will not be an offence in the States. Therefore besides amending the Indian Penal Code there ought to be a Civil law like Sarda's Bill.

*Mr. Kanhaiya Lal:* Supposing we have no marriage legislation, would you then advocate fixing the age of consent?

*A.* I would then fix the age of consent at 16.

*Q.* Supposing the marriage law fixes the age of marriage at 14, would you then have an age of consent at 16?

A. Yes; and postpone consummation till that age.

Q. If you raise the age of consent to 16 do you think cases will come to light?

A. I do not think cases would come to light but there will be an indirect check if people come to know the law. The result would be that marriages would take place at a later age and people would try to conform to the law.

Q. Supposing they do not conform to the law, can you suggest any measures for bringing cases of infringement of the law to light?

A. It is very difficult to suggest any method. I think ladies can take up the work.

Q. Would you be in favour of registering marriages, giving the names of the marrying parties, their ages and other particulars so that we might be able to find out whether the law has been infringed?

A. I think it will help in a way. But even then one will not know whether consummation has taken place or not. It will however have an indirect effect on the people.

Q. In such cases do you not think that people will take care not to offend against the law?

A. Yes.

Q. Would there not be an additional advantage in the sense that the persons interested would have material to find out what the ages of the married couple were before taking action?

A. It will be helpful. But at the same time there will be difficulty because it will create trouble and expense.

Q. But the number of marriages that take place will not be greater than the number of births and deaths that take place.

A. It will be helpful. But one does not know whether people would give the correct age or not. You will have to provide for punishing persons giving a false age.

Q. Do you think that these registers can be maintained by the municipal and local boards just as they are maintaining the birth and death registers?

A. In towns it will be practicable. But in villages I very much doubt if it will be practicable.

Q. Would you place the duty of maintaining these registers in rural areas on the local and district boards or on the revenue officials?

A. I would place it on the local authorities. They can check if there is false information.

Q. Supposing we require a verification that every statement made in the report was correct, would that not check false statements?

A. Education is wanting, and people will say that they simply put their thumb impression without understanding what it all meant. In such cases what evidence is there to find out that it was not so. You cannot make such people liable for false statements.

Q. Are you aware that the Parsis and Christians have got a register of marriages.

A. The Parsis are an advanced community. Hindus and Muhammadans are however different.

Q. Do you not think that the number of cases in which false ages may be given will not be so large as to outweigh the advantages of maintaining these registers?

A. I think the number of cases would outweigh. We should first create public opinion and ensure social progress.

Q. Would there be any motive in giving a false age in case the age of consent is very near the age of marriage?

A. There may not be any motive, but there are illiterate persons who cannot give the proper age. In the case of orphans it will be very difficult to find out the correct age.

Q. Another suggestion has been made that we might have matrimonial courts consisting of a magistrate and two non-officials for the trial of marital cases: Would you approve of that suggestion?

A. I do not think that is necessary. I think in some cases if the parties so desire the trials can be held in camera.

Q. Would you make these cases compoundable?

A. I think the very object would be defeated if you make the cases compoundable.

Q. Would you make them compoundable with the sanction of the court?

A. I do not think that the object of the law would be served if you allow compounding even if it is with the sanction of the court. I think some discretion should be given to the magistrate as regards punishment.

Q. In paragraph 3 you refer to the desirability of whipping being publicly administered. Do you seriously mean it?

A. Yes; I suggest whipping in extra-marital cases.

Mr. Bhargava: You said that clauses 3 and 4 of section 375, Indian Penal Code, do not cover some of the cases you had in mind. May I point out that section 90 defines "Consent" and section 375 should, in such cases, be read with section 90. The case you referred to would then come under "misconception of fact". Is that not so?

A. Yes; that is so.

Q. You said that the trial of marital cases should be in camera. In marital cases where the moral turpitude is not so great, why should the trial be in camera?

A. For this reason that young girl would be reluctant to give evidence. Some of the witnesses also who are related to the parties would like to give evidence if the trial is held in camera which they will not do otherwise.

Q. Do you mean by camera that at the time the statements are taken other persons might be excluded.

A. I mean that if the parties so desire the evidence might be in camera. In the case of marital offences the evidence would be that of the wife and the relatives and the parties would be reluctant to give evidence unless it is taken in camera.

Q. Why do you say that these cases should be summons cases?

A. That is what I find from the extract attached to the questionnaire. New Section 376A says that the police shall not arrest without warrant, bailable, not compoundable. That is the amendment. Also a summons case is easy. At the time of punishment the Magistrate takes into consideration many things before inflicting punishment.

Maulvi Mohd. Yakub: You say that at an age of 16 a girl is intelligent enough to give consent for cohabitation within marital relations. If the same girl at the age of 16 gives consent for intercourse outside marital relations you say that she is not intelligent enough to give intelligent consent. The girl is the same, her age is the same—what is the difference between marital and extra-marital relations?

A. If she is 16 she can understand things after marriage but so long as she is not married these things do not strike her and she may be induced to give her consent without fully understanding her responsibilities. The age is the same but the environments are different. When she is in the husband's house she comes in contact with other married girls.

Mr. Mitra: Din't you think that in marital cases mere physical development is enough while in extra-marital cases they require discretionary power to realise the consequences?

A. Yes.

Q. As regards the registration of marriages you have said that it may be done by district boards. How can it be done by district boards?

A. One of the members of the Committee asked me about registration of marriages and my view was that it is impracticable. Even if you want it this should be given to people themselves instead of to Government.

Q. As regards registration of births there are some systems in municipal areas and it is done accurately. Have you any experience about villages?

A. I have no experience but so far as I know it is not satisfactory.

**Written Statement, dated the 22nd August 1928, of Miss B. A. ENGINEER, M.B.E., M.A., LL.B., Secretary, Seva Sadan, Bombay.**

1. Yes, there is great dissatisfaction and strong feeling that the present age of consent is too low. As far back as 1891, 12 years was considered very low and since then, public opinion has considerably developed in favour of a substantial increase in that age.

2. The increase from 12 to 13 was very insignificant as the physical development of a girl of 12 does not differ materially from that of a girl of 13. There are various reasons which justify a substantial increase in the age, e.g., the Social and Economical conditions have quite changed, the steady rise in the marriage age of girls, spread of higher education among women. The economic conditions at present prevalent, necessitate the employment of women and girls in factories and other occupations. Hence considering all these circumstances it has become an imperative necessity to revise the law of the age of consent and we are of opinion that the age of consent against strangers should be raised to 18 and to 16 as against husbands.

3. Yes. (a) To raise the age of marriage to 16. (b) propaganda work for making the laws known and (c) rigorous enforcement of the prescribed punishment.

4. Raising of the marriage age to at least 16, and propaganda work.

5. 11—14, but it depends in a great measure on the mode of life and social environments of the people.

6. (1) Cases of cohabitation before puberty are not uncommon among certain classes of people.

(2) They are common soon after puberty in many communities.

(3) There are also cases before the completion of 13 years.

Few cases come to court because people do not like to give publicity to such matters.

7. We are not aware of any religious injunction though it is common knowledge that people who practise it put forward the plea of religious sanction.

8. In certain communities "Gaona" or "Garbhadan" is performed before consummation. It generally coincides with the consummation of marriage and is performed, as a rule, soon after the attainment of puberty.

9. My Council is of opinion that the attainment of puberty is not at all an indication of physical maturity to justify early consummation. A girl may be considered physically developed for consummation at least at 16 if not more. A girl is considered to be a minor for all purposes till she attains the age of 18, e.g., in respect of disposing of property, etc. Therefore it stands all the more to reason that where her moral and personal safety is in question the law should give her protection against strangers till she attains majority.

10. At least 18 against strangers, and 16 against husbands, though it is no doubt very difficult to give a definite reply. Much depends on the girl's environment, up-bringing, etc.

11. Cases of young girls becoming mothers at the age of 12—14 are not uncommon. Early motherhood means weak progeny, the health of the mother herself is irreparably shattered. Prevalence of diseases like anæmia, tuberculosis and like is also due to the same cause.

12. Yes; these are responsible to a great degree for high maternal and infantile mortality. Besides it is now an admitted fact that premature consummation adversely affects the intellectual and physical development of the people. The children born are ill-developed.

13. Yes, especially among educated classes.

14. Judging by the agitation carried on by women in various parts of the country, in respect of this matter, it may be presumed that women in general are against early consummation of marriage for their children.

15. Not in a city like Bombay. Compulsory registration of births and fixing the marriageable age limit to 16 may help in removing to a certain degree these difficulties.

16. Yes, a higher age of consent will considerably minimise the difficulty.

17. Yes, we would separate these two offences. Further we are of opinion that the raising of the marriageable age to 16 would solve the difficulty of enforcing punishment in the case of husbands.

18. Yes. If marriage age is not raised, then this difficulty arises, in that case, on the complaint of the girl or of those who would have been her guardians if she were unmarried, cognizance of offence should be taken.

20. We are of opinion that penal legislation alone will not be effective, therefore we recommend the fixing of minimum age for marriage as well as raising the age of consent because public opinion at least in Bombay is sufficiently developed in favour of both these safeguards.

21. Certainly education and social propaganda greatly contribute towards the progress of Social Reform, but experience in the past has shown that the progress of Social Reform cannot be accelerated without the help of Social Legislation.

### Oral Evidence of Miss B. A. ENGINEER, M.A., Secretary, Seva Sadan, Bombay.

(Bombay, 26th October 1928.)

*Chairman:* Are you Secretary of the Seva Sadan?

A. Yes.

Q. For how many years?

A. For the last 15 years.

Q. I presume you must have taken part in the women's meetings which decided these questions of age about the Sarda's Bill and Gour's Bill?

A. Yes.

Q. In the Seva Sadan or in connection with it do you come across cases of girl mothers below 13 or 14 or 15?

A. Yes.

Q. I think you know the conditions that exist with regard to marriages and child marriages among Hindus and Mussalmans?

A. Yes, I know.

Q. Have you any reason to believe that the present statutory Age of Consent is violated and that there are cases of cohabitation below 13?

A. I cannot say that.



Q. Have you seen any child mother of 13?

A. Yes.

Q. Within the last 5 years how many cases have you seen of 14?

A. A small number.

Q. Do you know of any community here in which the girls are necessarily married after 16?

A. No.

Q. May I suggest Pathare Parbhu community?

A. It is not necessarily but generally the Parbhu community get their daughters married late.

Q. What is the general age of consummation of marriage among the Parsis for instance?

A. It is late. Among that section of the Parsis called Iranis girls are married early at about 14.

Q. And they possibly become mothers at 15?

A. Yes, but among the Parsis who have settled down here there are rare cases.

Q. Would you say that among the Parsis marriages do not take place below 16?

A. Yes.

Q. You have had occasion, I dare say, of comparing the Parsi mothers after 16 with mothers of other communities among whom marriages take place early; can you compare their health and their children? Do you think Parsi girls are better off because they marry late?

A. Yes, they have better health. Their children are also healthy.

Q. Would you be able to say the something about the Parbhu community for instance?

A. Yes, they are just as good.

Q. And you think there is a difference between the several Hindu communities and others with regard to mother's health and that of the progeny?

A. Yes.

Q. Do you know of any other communities in which marriages take place after 16?

A. Indian Christians.

Q. Do you think generally speaking that among Indian Christians marriages take place after 16?

A. Yes.

Q. Would you be able to say the same thing about them as you said about the Parsis and Parbhu community?

A. Yes. My experience is that the later the girls are married the better they are.

Q. Would you raise the marriageable age to 16 and 18 or do you want the age of consent to be 16 or 18?

A. I want to have both. Marriageable age should be fixed at least at 16 and the age of consent should also be 16 in marital cases. Outside marriage the age of consent should be at least 18, if not more.

Q. Are you connected with any maternity home here?

A. No, I am an un-official visitor of the Cama Hospital.

Dr. Beadon: Has this Seva Sadan to deal with married girls or girls who are taking education? With what class of girls you come in contact?

A. Mostly with widows and married girls.

Q. Is there anyone who does any special work in Bombay for girls who go wrong? Are they cared for by the Seva Sadan?

A. The Womens Council are running a rescue home. We take the initiative and we are working for them.

Q. In answer to question 11 you say that cases of young girls becoming mothers at the age of 11 or 12 are not uncommon. During the last 5 years how many cases of that sort occurred?

A. I cannot give you the exact figures.

Q. Can you give us two or three cases?

A. I cannot give you figures.

Q. Do you know anything about children of these young mothers? Have you met anyone of them yourself?

A. Yes.

Q. Do you think they are average in physical development?

A. No, they are generally weaklings. When you look at the child you will at once say that.

Q. What is the difference between the children?

A. They are emaciated as if they were ill-fed.

Q. Is that among the very poor people or even among the wealthy people also?

A. Even among the wealthy people you would notice physical deterioration.

Mrs. Nehru: You have said that mothers at the age of 12—14 are not uncommon?

A. Yes, especially among the Gujarati Hindu community.

Q. Have you seen any yourself?

A. A good many.

Q. When you were visiting these maternity homes did you come across many young mothers?

A. Not very young, they were 16 or 17.

Q. Do all classes of people generally go to those maternity homes?

A. It is generally for poor women. Generally well-to-do people do not go.

Q. In the Rescue home started by the Womens Council how many girls are there at present?

A. 27 or 28.

Q. Have they been there for a long time?

A. The girls are not sent away till we see that they can be relied upon or till we find out some employment or service or occasionally we get them married. About six or seven have already been married.

Q. Which classes do they mostly come from?

A. They come from all classes, Hindus, Mohamedans and Parsis.

Q. Do they come by themselves or somebody brings them?

A. They do not come by themselves but now that the Bombay Prostitution Act has been put in force they are brought by the police.

Q. Are they generally younger than 16 years?

A. Sometimes they are about 14, 15 or 16.

Q. Under these conditions if the extra-marital age is increased, do you think it would protect many more girls than have been protected so far?

A. Yes. I do think so.

Q. You say that rigorous enforcement of the prescribed punishment should be resorted to. Do you want this for marital cases or extra-marital cases?

A. Extra-marital.

Q. Not for the breaches of marital law?

A. In that case the girl wives will have to suffer.

Q. Could you suggest anything for marital cases?

A. Either the husband might be bound over or the girl separated from him.

Q. Should bonds be taken from him to keep away from the girl till she attains the age of 16 years?

A. Yes.

Q. What age would you like?

A. 16.

Q. You say cases of cohabitation before puberty are not uncommon among a certain class of people. May I know which classes?

A. Among the working classes. Not necessarily factory women but among the servant class.

Q. What is your reason for separating the marital and extra-marital offences?

A. The main reason is the orthodoxy of our people. It will facilitate working of the law if we separate them and if lighter punishment is provided for marital cases.

Q. You want the right of complaint to be restricted to the girl or her guardians only. In that case, don't you think it will hardly ever be taken advantage of?

A. I think public opinion is sufficiently aroused. Guardians will take advantage of it.

Q. If this power is given to certain women's associations could you say from your experience of Bombay that there will be sufficient women's associations to take up this work and bring such marital cases to light?

A. Yes, I should think so.

Q. Don't you think public opinion will be against those associations?

A. I cannot say.

*Maulvi Mohd. Yakub*: Can you say what is the effect of modern education and civilisation upon girls in the matter of maternity and welfare of children?

A. You see all the schools have introduced physical exercises. This is because they noticed that physical growth of the children was not attended to. If the defect of physical education is not attended to the progeny is likely to be weak.

Q. Up to this time it was not attended to. Can you say that as a result of this the progeny of educated girls was weaker than the progeny of uneducated girls?

A. I cannot say.

Q. You have said that you attended the meetings of the Womens Association. What are the general ideas of educated girls about marriage?

A. They are against early marriages.

Q. Was the meeting attended by all communities?

A. Yes. Every one was in favour of raising the age.

Q. Do you know the number of ladies who attended?

A. It was a fairly representative gathering.

Q. What age did they approve of?

A. 16 for consummation of marriage.

Q. May I know the population of Irani Parsis among whom there is a custom of early marriage?

A. I do not know but they are not many. I am in charge of Parsi Girls orphanage at Bandra. As soon as a girl attains 14 she is taken away for marriage. This system of early marriage is not common among others.

Written Statement, dated 12th August 1928, of Dr. JADAVJI HANS-RAJ, D.O.M.S., (Eng.), J.P., President, and Mr. PREMJI CHATURBHUI, Honorary Secretary, of the Bhatia Mitra Mandal, 203-5, Hornby Road, Fort, Bombay.

1. Yes, there is. A girl of 14 or 16 years of age is not competent to understand the dangers and consequences of intercourse.

2. (1) We are not in favour of retaining the law of the Age of Consent as it is.

(2) We strongly advise and advocate an advance material and rational advance on the present law.

3. Crimes of seduction or rape are fairly frequent in our part of the country. We do not think the amendment of the law made in 1925 raising the Age of Consent to 14 years has in any way succeeded in preventing of reducing the cases of rape outside marital state or improper seduction of girl for immoral purposes. We believe the amendment of 1925 is known to very few people on this side.

We propose that newspapers should take up the subject and give the matter as wide and as frequent publicity as possible.

A Social Institution (ours being one of them) should publish Brochures on the subject and distribute them freely amongst their constituents.

Monthlies which treat matters relating to female sex should take up the matter.

Volunteers should be requisitioned to give public lectures especially in meetings of ladies.

4. The answer is in the negative.

(1) Whenever the girls below 13 have been married it is very rare that the consummation of marriage is postponed till the girls attain that age.

(2) The law as amended has not been able to educate or stimulate public opinion in the matter as the very existence of such a law is known to very few outside the legal word, but the age of marriage has advanced on account of general education and disbelief in old Puranic preachings.

(3) The answer to this question is given in No. 2.

5. In our part of the country the girls attain puberty between the age of 13 and 15, it differs according to the position in society, life, town, or village, environments and habits, community makes no difference but we believe food does, vegetarians attain puberty little later than non-vegetarians.

6. (1) Cohabitation is not so common before puberty.

(2) But it is very common soon after puberty.

(3) It is rather common before 13 in orthodox people. We have never heard, known or read any such cases coming to Court.

7. Yes. There is a Sanskrit Verse in Parashar Smriti: The penalty with which the believers in these preachings are threatened with is Hell.

8. No. Such ceremonies are performed with other ceremonies at the time of first pregnancy.

9. No. We consider that consummation of marriage and for all practical purposes, marriage itself should not take place at least 2 years after attainment of puberty.

10. Not before the age of 18.

11. Yes. Our President being a medical man does remember a number of cases where temporary and in some cases permanent injury to the girl is done to the physical condition of the girl by cohabitation before the puberty is attained. One instance can be given from memory where a girl aged 15 suffered from excessive hæmorrhage as a result of cohabitation with her own husband resulting in death. It is difficult to state the real cause for such hæmorrhage as no examination *ante-mortem* or *post mortem* was allowed.

12. Yes. Early consummation of marriage and subsequent early pregnancy and maternity is very highly responsible for high maternal and infantile mortality as well as for other results vitally affecting the intellectual and physical progress of the people.

It is a well-known fact in anatomy and physiology that the whole organisation and machinery of the human body is still in its development physically and functionally at the age when the puberty sets in. The period of puberty is only the first manifestation of the beginning maturity. Further it is well-known that pregnancy and maternity involves a very heavy call on the body. When that body requires these elements for its growth and further developments any extra taxation tells unfavourably on the growth, subsequently both suffer. The body of the expectant mother and the growing fœtus both of which starve from want of necessary nutrient material. The result is that the body of the expectant mother gets so weak that either she succumbs in the course or process of delivery or falls prey to such diseases as tuberculosis, sprue, osteo-malacia, etc. The new born already weak and under developed in Utero from want or insufficiency of nutritive elements which it has to derive from the weak and imperfectly developed body of the mother gets weaker still from want of proper amount and quality of mother's milk on which it has to depend entirely for the first six months of its life. The young mother too already weak gets still weaker from continuous drain on her system by supplying nourishment to the new born and from want of rest at night as she has to look after the baby at night as well day.

The result of all these circumstances is high death rate among the girls during or after delivery and among the new born in the first few months of life. On the other hand if the mother is fortunate to recover from the diseases mentioned above she becomes a life long wreek or invalid. The baby if saved by judicious methods adds one more number to make a nation of weaklings and dwarfs ailing and effeminate.

We may add further that a number of girls suffer from considerable damage permanent at times to their generative organs as these are put to immense strain on account of their under developed condition.

13. The amendment of the law has brought about no change whatsoever but education and general advancement in the ideas of the people have worked to a great extent in marrying their daughters late in life.

14. Only the orthodox few, their number is fast dwindling.

15. As stated above as no cases have been known so far the question of determining the age has not arisen. The measures which we would recommend:—

- (1) Regular and strict observation of the law relating to the registration of births.
- (2) More careful noting and registering of the age of the children by vaccinators at the time of vaccination.
- (3) Strict scrutiny at the time of the registering the age of the student at the time of going to school.

16. It will make a difference if the Age of Consent is raised to 18, because then the medical examiner will be in a better position to tell the age of the girl more definitely.

17. Yes, for marital offences we should recommend fines with imprisonment for one year at the most, for extra-marital offences imprisonment from 7 to 10 years.

18. Yes. In case of marital the proceedings should be in Camera.

19—20. No. We believe that anything short of legislation to fix the age of marriage would be futile to prevent intercourse of a husband with his wife under certain age, as very little control by law or police is possible after marriage. A certain section of the public may kick up agitation for the time being but it is bound to die a natural death in due course of time.

21. We would recommend both methods.

**Oral Evidence of Dr. JADAVJI HANSRAJ, President, Bhatia  
Mitra Mandal, Bombay.**

(*Bombay, 27th October 1928.*)

*Chairman:* Are you the President of the Bhatia Mitra Mandal?

A. Yes.

Q. How long have you been the President?

A. For the last 7 years.

Q. I suppose it has a large membership?

A. About 300. It is open to all Bhatias.

Q. May take it that this is the opinion of the whole Bhatia Mitra Mandal?

A. Yes.

Q. Was it put to the meeting?

A. This questionnaire was put before the managing committee and the answers have been approved by the managing committee which consists of about 15 members who are elected by the whole body.

Q. You want very much larger publicity for a law like this than it has been given before?

A. Yes.

Q. Have you any reason to believe that there has been a violation of the law of the Age of Consent?

A. I think there are many cases.

Q. In your community or outside?

A. Among all Hindu communities and especially among the orthodox classes where they marry their girls before 13 and it is a custom in most of the communities or castes that once a girl is married she must go and reside with her husband. In certain communities especially Nagars although the girl is married she does not go to reside with her husband unless she has attained puberty.

Q. What is the general age of puberty of girls among those classes who marry early?

A. I think it is somewhere about 12.

Q. Do you mean to say that in those classes girls are married before puberty?

A. Yes. In fact it is a rule among them, especially the orthodox, that they must be married before puberty.

Q. I suppose even in Bombay you would put the proportion of the orthodox people as a very large one?

A. It is very difficult to say because there are certain people who although they appear to be orthodox have views far advanced than the orthodox people but as they are related to orthodox people they do not come forward and express their views in public.

Q. Do you think hands of such people would be strengthened by any penal legislation?

A. I think so.

Q. Besides the fact of want of publicity do you think there are any other reasons why these violations of the law do not come to court?

A. It is quite natural. The parties concerned are husband and wife and as the father of the girl depends on the good wishes of the husband the parents of the girl would never come forward and complain, and especially in the Hindu Society where there is no divorce law and there is no separation from the husband in any circumstances.

Q. Supposing the law of the Age of Consent was improved upon and the age were raised, do you not think that law would be effective?

A. Not unless the marriageable age of the girl is fixed.

Q. You mean unless marriage itself is penalised below a certain age.

A. Yes. I think that is the only remedy for orthodox people.

Q. What age would you like to have for marriage?

A. 16 for girls and 20 or 21 for boys.

Q. With regard to those classes among whom marriages take place early, do you think the age if raised to 16 and 21, as you suggest, would be tolerated by the orthodox community. Do you think we will receive some co-operation from these people in the execution of the law?

A. In the orthodox class there will be a good deal of agitation against it but later on when they see the advantage of this that agitation will get suppressed. In the beginning there is expected to be a certain amount of agitation.

Q. In the Bhatia community itself what is generally the age of marriage of girls?

A. Formerly it used to be 12 but now that the education has advanced it is somewhere between 13 and 15.

Q. Is that before or after puberty?

A. It has no relation with puberty.

Q. You say in answer to question No. 6 that consummation is very common soon after puberty and it is rather common before 13 among the orthodox people. Does that apply to the Bhatia community?

A. I think it applies to all communities.

Q. Do you know of any classes here in the Hindu community where marriages of girls do not take place before 16?

A. I think it is among Kapor Banias. They marry their girls generally after 16.

Q. How long has this practice been in vogue?

A. I think it is for the last 15 to 20 years.

Q. Any other community?

A. I think most probably Ahmedabadi Nagars marry their girls later. Bhatias are following them but only those who are of advanced ideas.

Q. Have you any idea of Parblus?

A. No.

Q. Do you find the evil of elderly people of over 35 losing their first wife and becoming widowers and marrying young girls below 13, 14 or 15 in the Bhatia community?

A. Yes.

Q. Are such things of frequent occurrence?

A. Yes.

Q. Among Gujarati speaking communities also?

A. They are frequent. The richer the community the more frequent these cases are.

Q. Have you had any occasion to notice the evil effects of early consummation on mothers and children in such cases?

A. Yes.

Q. Are you of opinion that in such cases the evils are greater than if the husband of a girl were of a smaller age but well built?

A. All depends on the age of the girl. If the girl is of good age the result is not so bad.

Q. We are told that amongst the Bhatia community when girls are not available they are practically purchased from other parts of the country where Bhatia families or so-called Bhatia families live?

A. Yes. 15 years ago it was so and the girls were actually bought from parts of Kathiawar. But for the last 5 years they have found out that by selling girls in Bombay the young men of poor people remain unmarried for life. Now they have restricted and they do not give their girls outside their circle and this purchase outside is therefore becoming impracticable now.

Dr. Beadon: You have just now said that elderly men marrying young girls is very common. Is that among the higher classes?

A. Widow remarriage is not allowed. This generally happens among the richer people because they have money and can induce parents of certain girls to give those girls to them in marriage. This happens after the death of the first wife, and marrying a second wife during the life-time of the first wife is very rare.

Q. What proportion of these second marriages, would you say exist among your community?

A. It is very difficult to say exactly but it must be about 25 per cent.

Q. Within the last 12 months how many child marriages have taken place in your community?

A. It is such a big community nearly 7,000 and it is very difficult to know whether marriage has taken place. Recently a man at the age of 70 married a girl of about 14 or 15. Our Mandal raised a protest against that marriage and there was a good deal of agitation in the papers.

Q. Do you think there was much agitation to prevent such cases occurring?

A. That man was a wealthy man and he would not listen to anybody. Some people approached him but he would not agree.

Q. Can you give us some details of some cases in which early consummation and early maternity occurred?

A. There was one instance where copious hæmorrhage took place on account of early marriage and the girl actually died.

Q. What was the cause of that hæmorrhage?

A. It is impossible to say because there was no *post mortem*. At that time I was Chief Medical Officer, Cutch—it is about 10 years ago. Such profuse hæmorrhages are practically unknown. I think there may be some rupture of arteries of hymen. I can say for certain that this girl died on account of hæmorrhage due to early connection.

Q. Can you give us any other instances?

A. I know an instance where there has been a considerable damage to the soft parts and it lead to permanent injury.

Q. Do you mean this was as a result of consummation or child-birth?

A. On account of consummation. The girl was about 11 or 12.

Q. What was the age of the husband?

A. In some cases the husbands were about 25 and in some cases about 30 or 35.

Q. How many cases have you seen during the last 2 years?

A. I have not seen any cases now because I am in the ophthalmic line.

Q. During 5 years when you were doing general work how many cases did you see?

A. Not more than 3 or 5 but at the same time in this connection I should say that girls or females as a rule never go to male doctors unless it is a question of life and death, and especially in that part of the country where I was Chief Medical Officer, females would not go to any male doctor.

Q. What about children of these premature mothers?

A. These children die out very young and those that survive are either rickety or they contract tuberculosis. Most of these children are below average during birth and in infancy.

Q. What about labours in these young mothers?

A. Some of them are comparatively easier but others suffer a lot.



Q. Do you find that there is any sort of permanent damage to maternal health?

A. Yes, in some cases there was rupture of perineum and it lead to septic conditions.

Q. Have you seen a good number of cases?

A. I could not tell you exactly but I have seen a good number of them.

Q. Do you think the maternal health suffers more in young mothers than in women of 18?

A. I do believe so.

Q. You know that from your personal experience?

A. Yes.

Mrs. Nehru: In reply to question No. 6 you say that cohabitation is not so uncommon before puberty. Does it mean that cohabitation does take place before puberty?

A. Generally where girls are married after puberty it is not so common. If they are married before puberty cohabitation does take place but the number of such cases is decreasing every day.

Q. When you say the number is decreasing how much would you put it at in your community?

A. I think now we are equally divided. In 50 per cent. cases consummation takes place before puberty and those 50 per cent. men are orthodox. The proportion of orthodox people is 50 per cent. of the population and among this 50 per cent. consummation does take place before puberty. As a rule in Bhatia community once the marriage takes place there is practically no interval between marriage and consummation of marriage. In certain communities the girl is not sent to father-in-law's house until she has attained puberty but in the Bhatia community that is not the rule.

Q. If consummation of marriage is common among orthodox people before puberty, why do not these cases come to court?

A. The reason is that in the Hindu community once a marriage takes place, the father of the girl would try to keep best relations with the husband because that leads to the happiness of the girl and they would not do anything which would come in the way of her happiness.

Q. At the same time are they not against consummation before puberty nor principle?

A. They have not the least idea about it.

Q. Do you mean to say that the girls' parents do not know what is happening to their daughters?

A. The girls do not complain to their parents and even if they do the parents remain silent.

Mrs. Nehru: But don't you think it is natural for a girl to complain to her mother or father?

A. But the mother and father always remain silent without exception. I think the solution is to raise the age of marriage.

Q. Supposing that is impossible.

A. I think then there is no remedy. I think the Age of Consent Law cannot in any way be made effective in the matter of marriage relations.

Q. Supposing we give the power of complaint to an association like your—Bhatia Mitra Mandal—will there be any difficulties in bringing cases to light?

A. As a matter of fact, very few people will come forward to make complaints but institutions like ours may take up this matter.

Q. Suppose it is possible to take up this matter for associations like yours, will not this very act work as a deterrent and besides there being no question of spoiling the relations of husband and wife, wouldn't many cases come to light?

A. If there is a law giving these powers to associations like ours, then I think these associations may bring out certain cases but it is not possible to bring all cases. But giving these powers to associations will at times be a source of nuisance to the parties who may be unnecessarily troubled by a single member for reasons best known to him. So this power cannot be left to any single member and it must be left either to the whole association or to a Special Committee appointed by the association and in that committee only those people will be appointed who are trusted by the people.

Q. If it is made necessary for the complainant to have the previous sanction of the Magistrate, do you think the fear of the misuse of this power will be lessened?

A. Yes. I think so.

Q. As regards the punishment, you want the punishment to be reduced to a fine. Do you want this irrespective of the age of the girl and the boy?

A. I don't like to make a special provision for any classes of cases.

Q. Is your Bhatia community considered to be a rich community?

A. Yes. It was sometime back one of the richest communities of Bombay.

Q. What is the condition of women's education in your community?

A. Now it is improving. In the matter of high education very few Bhatia girls take this sort of education and the condition of education is much better than what it was about 10 or 15 years ago.

Q. How many girls are going to schools?

A. 80 per cent. go to schools.

Q. Are most of the women literate?

A. Yes.

Q. Is your community a big community?

A. I think there are about 7,000 people here; outside Bombay there is an equal number.

Mr. Mitra: Are you for fixing the minimum age for marriage at 16?

A. Yes.

Q. Do you think the orthodox people in your community will take it with a good grace without much hesitation?

A. They wouldn't have it with a good grace. They will start an agitation.

Q. Amongst the orthodox people of your community, do not marriages take place before puberty?

A. Generally now-a-days, marriages take place amongst them after puberty. But marriages also take place before puberty.

Q. You say in para. 7 that in practice even the people amongst the orthodox section don't get all their girls married before 11 and some of them do so. May I know what is the reason for this?

A. The majority of them cannot afford to have their girls married before 11. And now-a-days during these ten years marrying the girls before 11 has fallen a good deal. The per cent. is very small.

Q. Do you mean to say that this scriptural text is not followed in practice so much now-a-days?

Q. Yes. My experience is that these people always pick up a row whenever a new civilization is introduced. It is a part of their nature to stick to their old thing and any movement that they think would upset their religion, they at once pick up a row. Of course after a time they get reconciled.

Q. You suggest registration of births.

A. Yes.

Q. Have you experience of the mufussils?

A. No.

Q. Can you not say how the registers are maintained?

A. I know about Cutch. There the births are registered either by the police patel or who is a local officer in a village. In towns they are done by a medical practitioner.

Q. Do you think that in a municipal area the registers are fairly correct? Can you say the same thing of the villages at present?

A. Generally the dates are likely to be correct. I suggest that there should be a strict observance of this rule.

Q. When the registration of births are made, then have the children any names?

A. The custom amongst our community is that the name is generally given on the sixth day.

Q. It has been suggested that a column should be left in the register for the name to be entered which may be filled up later on to make it more accurate. There has been the suggestion for recording of marriages. Do you support that?

A. In olden days marriages were recorded in the Books of the Mahajan and especially in the Bhatia community this system is not now so strict otherwise they were regularly registered in the Books of the Heads of the community. I think even if this system is followed carefully, our purpose will be served.

Q. It has been suggested that because the punishment is so severe in a marital offence that people don't come to court and don't want to expose themselves. Do you agree with this?

A. As I have stated in paras. 19—20, it is not because the punishment is severe but because of the social condition of the Hindus.

Q. If the punishment is reduced to a fine, do you think that there are more chances of cases coming to Court?

A. I don't think there will be any difference.

Q. As regards the punishment for infringing the marriage law, do you want fine or imprisonment or both?

A. I think for the first five years there should be fine and nothing else. As the people get more accustomed to law, the punishment may be more restricted. But small fines would not have any effect on the communities like Bhatia.

*Moulvi Mahomed Yakub:* Do you think that the proper age for marriage of boys is 20 to 21 years?

A. Yes.

Q. You know that on account of climatic conditions in India boys here attain puberty rather at an early age and so don't you think that if marriages are postponed up to about 20 and 21, there will be more immorality?

A. My answer is, those boys who turn out immoral in their life, will turn out immoral whether they are married or not at an early age.

Q. Don't you think that there are greater chances of a boy becoming immoral if he is married at a late age?

A. We find answer to this question in a place like England where the boys are married late

Q. Don't you think that postponing a marriage will not increase the risk of boys?

A. It will increase the risk to a certain extent. There is no doubt about it but we have to look to the other side of the question as well. If they are married early the constitution suffers and they become very weak physically.

Q. If the girls are married late, don't you think that there are chances of their becoming immoral more especially in the case of factory girls who have to go about without any protection and have to mix with young boys having no education?

A. From what little I have heard of these factory girls, it makes no difference whether they are married or not.

Q. What is your opinion about the morals of the factory girls?

A. I cannot tell you and I have no experience.

Q. I wanted to know that which you have heard.

A. So, their morality is not so good as one would expect.

Q. Therefore I suggest that if they are married soon after attaining puberty they will have somebody to protect them and to look after their morality and also there will be less chances of their being led astray.

A. The parents will look after them when they are unmarried.

Mr. Bhargava: May I know what is the percentage of widowers who marry a second time in your community?

A. The percentage is about 18 to 19 per cent.

Q. Then may I take it that as regards the rest, the difference of age between a boy and a girl is generally two or three years? Is it so?

A. Not in all cases. Generally it is two or three years. Especially the educated classes are trying to increase the difference somewhere about 6 or 7 years.

Q. You were pleased to say that so far as the breach of the marriage law is concerned a heavy fine would do; but taking the whole of India in your view including our upper India men also on whom sometimes heavy fines may not sufficiently have preventive effect, do you think that it would be wise to arm the Magistrate with the power to inflict imprisonment also on the boy.

A. Not for the first five years. These five years will be a sort of experimental stage and the Hindu community will not be prepared to meet such a legislation.

Q. In the Baroda State levying of fines having proved ineffective don't you think it is a waste of time to wait all these five years.

A. It is simply a sort of time for preparing the whole community.

Q. Do the poorer classes live in villages or in the city. What is your experience about child marriages amongst them?

A. The poorer classes live in villages also. Child marriages are as common there as in a place like Bombay.

Q. Then don't you think that there will be agitation amongst the village people also?

A. I don't expect any agitation from those people.

Q. Do you want camera trials both in marital and extra-marital cases?

A. Yes.

Q. So far as the marital cases are concerned, don't you think that the statement of the girl may be taken in closed doors and the rest of the proceedings may be proceeded with as far as possible publicly?

A. We came to the conclusion that it would be graceful in the interests of the whole community or society if these proceedings are in camera entirely.

Mr. Kanhaiya Lal: Would you like to have these marital cases tried by ordinary courts or by Matrimonial Courts consisting of a Magistrate and one or two non-officials?

A. My answer is that an ordinary Stipendiary Magistrate is quite good.

Q. Would you make these cases compoundable?

A. No.

Q. Would you make them compoundable with the sanction of the Court?

A. No. I would not. If these cases are made compoundable then the force of this law would be lost.

Q. Don't you think that if these cases are compounded, better relations might subsist between the wife and the husband?

A. Yes. I would agree to these cases being compounded.

Q. As an auxiliary to the legislation fixing the minimum age for marriage and the Age for Consent, would you like to introduce a system of registration of marriages giving the names of the married parties and their ages?

A. I have already stated that in certain communities there was a system by which all the marriages were registered in the Books of the Mahajan. Such books are still kept in some communities. Of course, these books are incomplete where the ages of the girl and boy are not mentioned and they are not open to the inspection of the public.

Q. So is it not desirable to have a common register for all the communities where all these marriages might be registered and facilities afforded to the public to find out how far the law is observed.

A. In answer to this question I say that in the beginning for the first five years this duty should be placed on the head of the community just to avoid unnecessary trouble to the parties. Supposing this system turns out to be unsuccessful, then the next thing is to have a regular Government Register.

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**Written Statement, dated 11th August 1928, of Dr. Mrs. MALINI B. SUKTHANKAR, M.B., B.S., J.P., Honorary Physician for Children, Cama and Albless Hospitals, Bombay.**

1. There is dissatisfaction so far as the educated portion of the public is concerned. As regards the uneducated, they are either ignorant of the law as it is, and of the circumstances which would necessitate a change, or they are also orthodox, and would not like to prevent any wrong, if such wrong has the cloak of religion to protect it. Further, there is not any organisation for ascertaining the actual views of the general public in the matter.

2. The present law needs an advance under the following circumstances:—  
The present law is, so far as I understand it:—

Sexual intercourse by a stranger with a woman over 14, if it is with her consent, is not penal at all.

Sexual intercourse by a husband, with a wife, over twelve but under thirteen, is mildly punished; with a wife over thirteen is not punished at all; with a wife under 12, is punished as a rape.

This needs change for the following reasons:—

A woman is, in my opinion, not physically fitted for the strain of child-bearing, unless she has attained the age of at least seventeen; so that assuming impregnation to take place immediately after her attaining sixteen years, she would be just fit for giving birth to the child at the proper time, without causing lasting injury to her constitution with the standard of constitution which is now available, as a result of various circumstances, child-bearing started under that age is found to lead to (i) consumption, anaemia, neurasthenia, lowered vitality, hysteria, and various other serious diseases following the premature strain. in the case of the mother, and (ii) a very poor breed of children, who either do not live over a year, or are sufferers from various diseases during childhood as a result of insufficient resistance and vitality, and die without reaching manhood or womanhood as the case may be.

Applying this principle to the two cases of the husband and the stranger:—

A stranger must be severely punished (as for rape) for inflicting a chance of such an injury, to the constitution of a woman, though she may (being over fourteen) consent, for a woman does not usually realise, at the age of 14, the serious results of the matter to herself, and the consent though given, cannot be said to be the consent of a reasoning human being. after balancing the *pros*

and cons. Therefore, it is desirable that, whether a woman can judge rightly or wrongly, she should not be given a chance of child-bearing, at the hands of a stranger in any case, unless she is physically fit for the strain.

As regards husbands, many girls do not attain puberty now-a-days till after thirteen years of age. And marital relations begun before puberty is attained, is sure to cause mental or nervous injury, and may even cause serious physical injury; especially, as in the present times, parents do not feel any compunction in marrying girls of tender age, to fully matured, middle-aged, or even old men. The majority of girls attain puberty at or about fourteen, so that after that age, though child-bearing is still unsafe, and harmful until the age of seventeen is attained, yet the culprit has legal marital rights, which have to be considered. Though I would personally make no difference between the position of a stranger, and a husband, so far as punishment is concerned, if the general public opinion demands it, these rights should be restricted at any rate to the age of fourteen, so that the girl has at least then attained puberty. Orthodoxy requires marriage before puberty is reached, so that the girl is a wife when puberty is reached, and has a legal protector against strangers. Considering that the majority will always be stagnant and orthodox, marital rights should not be allowed to be exercised until at any rate puberty is attained. As fourteen is the average age, it should be limited to that age. Then it might be left to the good sense of the husband. In the case of a stranger, he must not be given the chance of causing injury.

Therefore, the present law needs change. And there must also be legislation in addition preventing marriages before that age, so that this law will be automatically observed.

3. So far as I am aware, cases of seduction or rape are not frequent in this part of the country. I am not in a position to give an opinion as to the effect of the change in the law.

4. I am not in a position to give any definite opinion as to the result of the legislation. I think, however, that legislation of this kind, raising the Age of Consent, will not by itself, be of much use. For, as a rule, no wife will give evidence as to a breach of the law against her own husband and the offending husband will invariably escape punishment. The only way to make legislation raising the Age of Consent within the marital state effective, is to supplement it by legislation fixing the age for marriage, and severely punishing infringement, including in the punishment all aiders and abettors. Persons attending such a marriage should be prosecuted as being members of an unlawful assembly. I think that the womanhood of India can be protected only by legislation fixing the age of marriage, as the mere changing of the Penal Code will not bring all offenders within the clutches of the law.

5. Fourteen years. Difference is not much, but the lower classes attain puberty between thirteen and fourteen.

6. Among the lower classes, cohabitation before puberty is common. Hardly any of these cases come to Court, for the people are afraid of Courts of Law, and police investigations. I know of only one instance which was the subject of a magisterial inquiry, in which a girl was brought to me for examination as to her having attained puberty, and being fit for marital relations.

7. Yes, though not wholly. Poverty is another cause, which compels parents to throw the burden of maintaining the girl on other shoulders as early as possible. The injunction is religious. So far as I am aware there is no penalty prescribed. Educated classes disregard the injunction. But in minor areas or communities, out-casting is practised.

8. Yes. It is performed on attaining puberty, if the girl is then already married. If not, on the first appearance of the menses after marriage, and

in either case on the sixteenth day after puberty, or first appearance of menses after marriage. In the lower and poor classes, there is no such ceremony so far as I know, and the girl is sent to the husband's house immediately on marriage, and there she may or may not be protected by the mother-in-law.

9. No. In my opinion, sixteen is the proper age for consummation of marriage.

10. Sixteen at the earliest.

11. There was one case in the Cama Hospital at Bombay to which I attended, where as a result of co-habitation after puberty, but before the girl was physically fit, the girl was suffering from severe mental and nervous shock, resulting in hysteria, and dread of marital relations. The girl was over fourteen but under fifteen. Husband was about 40 years old. Injury was mental only.

12. Yes. There is no doubt about this, if one takes into consideration all the concomitants of the present day life, which have the effect of lowering human vitality.

13. The advance in opinion is restricted only to the educated and liberal-minded portion of the public. I believe that the failure of the 1925 legislation is responsible for the support which is seen both to the Gour Bill, and the Sarda Bill.

14. Not in the educated classes. As regards the rest, they have to be forced to do what is right and proper, in the interests of the race.

15. Difficulty arises as a result of insufficient registration of births. Though in cities, a more or less sufficient register of births is kept, yet in rural areas, there is little or no evidence of age, and one has to depend solely on medical examination, which is not always correct, on account of various reasons.

16. If legislation restricting marriage to a particular age is passed, there will be greater diligence in the matter of preserving evidence of age, and obtaining satisfactory evidence of age. Gour's Bill will not remove the difficulties.

17. Personally, I would not make any difference between an offence by a husband, and a stranger, so far as the age is concerned. To start with, punishment should be exemplary and the present punishment for rape should be administered both to husbands and strangers, effecting marital relations with women under the age of sixteen years. Later on, when the evil has been mitigated, the punishment in the case of husbands should be reduced, even to two years' imprisonment, as in Gour's Bill.

18. The present procedure should be retained. But in either case, the trial should be held in camera, to encourage the offended parties to give evidence freely, and only the punishment should be allowed to be broadcasted through the press.

19. I am not aware of any safeguards, and am not in a position to answer this question.

20. I think legislation fixing the minimum age for marriage will be more effective. But this should be supplemented by penal legislation, if necessary. It would be better to have special legislation for marital relations, and to change the present penal legislation, so as to cover offences by strangers only. Both the special legislation for the marital relations, and the legislation changing the present provisions of the Penal Code should be given simultaneous effect.

21. I would not rely on either solely. Both attempts must be made simultaneously. Propaganda cannot have sustained support, especially as it will have to be more or less honorary, and localised. Penal legislation will embrace all the corners of the country, and the minds of the people will be brought to the pitch of putting up with the punishment, when by means of social propaganda, they are satisfied that the legislation is for their benefit.

Oral Evidence of Dr. Mrs. MALINI B. SUKTHANKAR, M.B., B.S.,  
Honorary Physician for Children, Cama and Albless Hospitals.

(Bombay, 27th October 1928.)

*Chairman:* I understand that you are an Honorary Physician for children in the Cama and Albless Hospitals.

A. Yes.

Q. Is it for women also?

A. Yes.

Q. Are you connected with the maternity ward?

A. I am not connected with the maternity ward but I am in charge of the children. I know nothing about the maternity ward. I have been working in the Infant Welfare Centres and I have got a record of few cases under 17 at the Worli Infant Welfare Centre where also I work. We had 424 cases for confinement in 3 years. Out of them 40 cases were under 17 years; 4 cases of 13 years; and 4 cases of 14 years; and the rest were above 17 years. Weights of the babies of women confined under 17 ranged from  $4\frac{1}{2}$  to 5 lbs.; and over 17 years it ranged from  $5\frac{1}{2}$  to 6 lbs.

Q. Could you tell us what class of women come there?

A. They are mostly from the labouring classes. There are a few Mahomedans amongst them.

Q. Could you say that those women who had come there had a good physique or a weak physique?

A. They had a good physique. I have few figures also of the Bhatia Hospital which is a maternity hospital for Bhatia women only. They had 167 cases in one year from 27th April 1927 to 27th April 1928. Out of them 15 cases were under 17 and the lowest age was 15; and the rest were over that. Weights of the babies on an average was  $5\frac{1}{2}$  to  $6\frac{1}{2}$  lbs.

Q. Are Bhatia girls generally of a high social standing?

A. Yes. They are also well-nourished and they take good food and plenty of milk, etc.

Q. What is the age of marriage you want to lay down?

A. 15 for marriage and 16 for Age of Consent.

Q. And for boys?

A. For boys it ought to be 21.

Q. Have you any idea of registration of births in the villages?

A. No.

Q. Have you any idea of registration of births in the Municipal Areas?

A. No.

Q. For how many years have you been practising?

A. I am practising for the last ten years and I am acquainted with all classes, Gujratis, Mahrattas and Deccanis and the labouring classes.

Q. How did you come into touch with labouring classes?

A. I have been working in the Infant Welfare Centre and that is why I have come into touch with them.

Q. Have you reasons to believe that marriages are consummated amongst any particular class of people before 13 is complete?

A. I was enquiring amongst the Gujrati people. I find that they have no such ceremony at all. Now-a-days girls also marry at a late age.

Q. Supposing the girls marry at an early age, what would happen?

A. Of course consummation does take place. In fact I had two or three cases at the dispensary and on questioning them I found that that was so.

Q. Do you think that consummation takes place before puberty or after puberty?



A. So many cases are taking place even before puberty. If a girl is married, she is to stay with her husband and that covers everything. There is no question of age and no question of remedy. The only thing is to raise the age for marriage and unless that is done we cannot prevent this.

Q. Do you think that this practice of consummation either before puberty or soon after puberty is due to a want of knowledge of the existence of this law or do you think that most of the people know this law and consciously break it simply because they are not likely to be detected?

A. I don't think the women know about this law but it is the custom.

Q. Had you any occasion to talk to ladies who know about the existence of the present law?

A. No.

Q. We are told that it is just possible that if people knew this law better,—large publicity is given to the law—they would not break it?

A. Whether the law is broken or not, it is not likely that these cases will come out.

Q. Could you suggest any method to bring these cases to light?

A. I don't think I can suggest any effective method of getting these complaints brought to light.

Q. Do you hold that 17 is the age for safe motherhood?

A. Yes. But under the present conditions even if we get 15, it would be something.

Q. Supposing the girls are married late at 16 or 17, is there any risk of their going wrong?

A. I don't think there is any risk of that kind, whereas in India at present girls are being kept unmarried up to the age of 16.

Q. Your present suggestion of 15 is an improvement on what you have said in your statement towards the end of para. 2. Is it wrong or would you like to correct it there perhaps?

A. Yes. I would make it 15.

Q. In the cases of breach of the marriage law—supposing one is enacted—you suggest a very severe punishment for visitors. Don't you think that it will prevent anybody going to a marriage party at all?

A. It is only meant for the parents.

Q. What is your idea about the punishment in these cases either in the Age of Consent or in the breach of the marriage law? We have been told that very severe punishment deters people from bringing these cases into Court. Do you think that the punishment has anything to do with these cases coming to Court?

A. I think publicity itself will prevent them from coming to Court. I don't think the punishment has much to do. In the beginning at least the punishment ought to be severe and we will be getting hold of one case out of 200 cases only.

Q. It has been suggested that in the case of the first offence, instead of punishing the husband, we should take security bonds from the parents of the boy and the girl, or if the boy is a major from the boy himself, for keeping the boy and the girl separate till the prescribed age. It does not estrange the parties and secures the object we have in view. Do you think that it will have a good effect?

A. I think it is a suggestion which is well worth giving a trial.

Q. There are some people amongst whom marriages and consummation take place before 13. How do you think they would take a law like this?

A. In the beginning there will be ruffle. But I think ultimately they will agree to it. Even now most women except in the lower classes are beginning to realise that girls ought not to be married at a lower age.

Q. Would you say that the propaganda already done has been effective and has brought about such an awakening that we can enact safely a law and that the people would acquiesce in it with good grace?

A. We ought to have more of social propaganda, and we must have legislation also behind it. Then only will there be some improvement.

*Dr. Beadon:* In the welfare centres in which you work, do you find many children of these immature mothers?

A. I have recorded 8 children of immature mothers out of a total of 40

Q. What about those 8 children?

A. Two were still-births and the rest were 4½ to 5 lbs. in weight.

Q. Do you find that the children improve as they grow up?

A. That depends upon the environments they have got.

Q. I believe these children come from the same classes. Do they thrive as well as children of the other classes?

A. They thrive with difficulty. They do not thrive in the same way as children of the other people do.

Q. In answer to question 11 you have given us a case in the Cama hospital. Can you give us any other cases in which there has been injury to the girl?

A. No.

Q. In answer to question No. 12 you say that there is no doubt that early maternity causes deterioration. Can you tell us out of the many other deteriorating factors like bad housing and poverty, how much percentage would you assign to early maternity?

A. I will give about 20 per cent.

*Mrs. Nehru:* Is it a fact that there are about 40 or 50 social reform associations in Bombay?

A. Yes; but they do not touch the lower classes at all.

Q. Are they restricted mostly to their own communities?

A. Some are restricted to their own communities like the Pathare Prabhu community. But there is no association which touches the lower classes and they do not improve their customs. I have seen girls of 5 and 6 married amongst them.

Q. If the power of complaint in marital cases is given to these social reform organisations, do you think they will utilise it?

A. I think they might be able to do so.

Q. Do you find them pretty active here?

A. In my experience I have not found them active. Perhaps they are working in other localities. I cannot say anything about it.

Q. Will they be willing to utilise this power?

A. Yes.

Q. Will people be willing to give them information about such cases and help to bring them to light?

A. I think people would be unwilling to have any change in the present system. They would go on as they have been going on.

Q. Do you think that this evil is confined only to the labour classes?

A. I think so. In other communities girls are married at a much later age than they used to do formerly. They are married at the ages of 13 and 14.

Q. Even if the girls are married at the ages of 13 or 14, if the age of consummation is fixed at 16, there will be 2 or 3 years to cover. The law will therefore apply not only to the labouring classes but to all the classes. In such circumstances will these associations be able to get information of the breaches of the law?

A. Unless social workers are active, I do not think we will get these cases out.

*Q.* Is the feeling against the crime strong enough to impel these social organisations to take action?

*A.* They ought to feel it. But I do not know whether they are feeling it.

*Q.* In your statement you say that parents do not feel any compunction in marrying tender girls to old men. Do you think that the number of such cases is very large?

*A.* I think there is a fair number of such marriages. I refer of course to widowers marrying young girls.

*Q.* Is it confined to any particular class or is it found in all classes?

*A.* It is found in all classes.

*Q.* Is that so because widow remarriage is not allowed?

*A.* Widow marriage is allowed, but the women themselves do not like to marry. And people do not now make much fuss about widow-marriage as they used to do.

*Q.* Why do not people discourage unions of grown-up men with young girls?

*A.* People do not seem to think anything about it. It is a common occurrence. We see many cases like that.

*Q.* In para. 7 you say that in some minor areas and communities out-casting is practised. What do you mean by minor communities and minor areas?

*A.* I mean in some rural areas if a girl is kept without marriage till late outcasting is practised.

*Q.* In para. 11 you refer to the case of a girl who had mental injury as the result of early cohabitation. What was the caste of the girl?

*A.* She belonged to the Dhanawala or Bania community.

*Q.* You say in para. 13 that the failure of the 1925 legislation is responsible for the support which is given both to the Gour Bill and the Sarda Bill. What do you mean by the failure of the Bill of 1925?

*A.* I mean that it has been ineffective.

*Q.* What is the cause of its being ineffective?

*A.* I think the educated and liberal-minded people do not take advantage of it.

*Q.* What measures can be adopted to make people take advantage of the Age of Consent Law?

*A.* I think the Age of Consent Law would work automatically if the marriage law is there.

*Q.* You say that for the first few years punishment should be greater, and then it could be made lighter. On the contrary some thought that to induce people to bring to light such cases the punishment in the beginning should be lighter and later on when the people got acquainted with the working of the law if so desired, the punishment could be raised.

*A.* I do not think so. I think we will have to be severe because you will have to make an example to others.

*Q.* Under the present law in cases of girls under 12 the punishment is penal servitude for life or 10 years' rigorous imprisonment. This you will admit is deterrent enough. Why is it then that no cases have come to light?

*A.* I cannot say.

*Mr. Mudaliyar:* May I know what the condition of the mothers were in cases in which you said that they delivered at 13 or 14?

*A.* All of them were normal deliveries.

*Q.* Were all of them delivered in their own houses?

*A.* Yes.

*Q.* Did you attend the cases?

*A.* No; the nurse attended them.

Q. From whom did you come to know the ages of the girls?

A. Some of the cases come to me. The age is what the patients tell us.

Q. Did you follow the cases later? Were the complications after delivery?

A. We keep them under observation only for 10 days.

Q. Did you follow the history of the babies?

A. All the babies were living except two.

Q. You say that you do not want to make any difference between the husband and the stranger with reference to the age of the girl. May I point out that so far as the husband is concerned the physical condition is the main point, but so far as the stranger is concerned, the moral point overwhelms the physical point. Would you not therefore raise the age to more than 16 so far as the stranger is concerned? Even at 16 a girl is not competent to realise the moral consequences. Would you not therefore fix the Age of Consent outside marital relations at 18, the age of majority?

A. I have no special objection to that.

Q. You say that a husband who has sexual intercourse with a girl under 13, but over 12 is mildly punished. Do you think that the present punishment of 2 years is mild punishment?

A. I think two years is enough punishment.

Q. Supposing your suggestion to raise the Age of Consent to 16 is accepted. Would you then have a different punishment for offences between 13 and 16 or would you have the same punishment as it is now between 12 and 13.

A. I think that after 13 or 14 there should be milder punishment.

Q. Would you be content with fine only or do you think that imprisonment is absolutely necessary?

A. I think imprisonment is necessary. But it should not be as high as 2 years.

Q. Do I understand that you are not satisfied with the system of birth registration as it exists in Bombay?

A. It is so.

Q. Do you mean that a number of cases are not reported?

A. The cases that go to the Dais are not reported.

Q. As a medical practitioner would you object to the obligation being laid on you to report to the police cases of infringement of the law that come to you professionally?

A. I would accept it if it is made obligatory by law. There would be no conscientious objection on our part. Of course we would inform people that we would report such cases.

*Mr. Bhargava:* It appears that there will be very few cases if the Age of Consent Law is passed. Is it your opinion that because you want to make examples of these cases you do not want to make the offence compoundable?

A. I think it should depend upon the age of the girl. If the girls are below 12 I would not allow compounding. After 12, if the parties agree, the offence may be compounded with the sanction of the court.

Q. You say that if the marriage law is passed, the parents should be punished. What punishment would you give in such cases?

A. I would give only fines.

Q. You said that there were 186 cases amongst the Bhatia community? During what period was it?

A. During 1927-1928.

Q. From these figures would you conclude that there are no cases of early consummation amongst the Bhatias?

A. There are, as a matter of fact, cases of early consummation. The figures were only the figures we got.

Q. What is the extent of that early consummation? Is it rare or is it common?

A. I cannot say exactly.

Q. You said you advocate the segregation or separation of the husband and the wife in marital cases. If that is so where will the wife be put up?

A. She should be sent to her mother's place.

Q. Are there any institutions in Bombay which would undertake to keep such girls with them for about 2 years?

A. At present I think there is no such institution. But I think if such a law is passed, new institutions will come up for that particular purpose.

Mr. Kadri: You say that the failure of the 1925 amendment is responsible for the support which is being given to the Gour Bill and the Sarda Bill. What do you mean by the failure of the 1925 amendment?

A. I mean that the amendment has been ineffective.

Q. To make the law effective some remedies have been proposed, would you have the trial in camera?

A. Yes.

Q. Would you like the idea of matrimonial courts where such offences can be tried whether by a magistrate and two assessors or entirely composed of non-officials?

A. There should be matrimonial courts and the offences should be tried in camera.

**Written Statement, dated the 7th August 1928, of Sir LALUBHAI SAMALDAS, Kt., C.I.E., Bombay.**

While there is great deal of dissatisfaction with the existing state of Law as regards the age of consent amongst the majority of educated and advanced classes, I do not think the masses have given much thought to the subject. At the same time there is a certain class of persons who do not think the existing law unsatisfactory so far as it affects the Consent within the marital state. The demand for increasing the age of consent against a stranger is based both on physical and moral grounds and it is supported by the fact that no agreement is binding on a girl if she signs it when she has not completed her 18th year. It is therefore necessary that the age of consent when a girl gives away her virginity should be at least as high as in the case of other contract. On purely physical grounds the age of consent within the marital state should be 18 years also; but looking to the existing social conditions in the greater part of the country I will be satisfied if it is raised to 16 years.

In my part of the country and among the classes about whom I have a personal knowledge, cohabitation before puberty is, I believe, never practised and it is very seldom practised *immediately* after puberty. I do not know of any religious *injunction* ordering consummation of marriage before, at, or even *immediately* after puberty; and even if such did exist, they must have been laid down in accordance with the custom and requirements of the time and cannot be taken as binding on Hindus for all time to come. I do not think that attainment of puberty is any indication of physical maturity requiring immediate consummation of marriage. As a matter of fact the marriageable age of girls has been steadily rising and in several cases in my community the marriage ceremony takes place after the signs of puberty.

Early maternity is responsible for high maternal mortality and to a certain extent for high infantile mortality also. The vitality of children born of early marriages is usually low and even when these children grow to manhood, they are generally found deficient in physical and moral stamina.

There has been a marked development in recent years in public opinion in favour of raising the age of consent. I would not attribute it to the amendment of law in 1925. It is due to the general improvement in the moral outlook and is confined to the educated and advanced classes.

**Oral Evidence of Sir LALUBHAI SAMALDAS, Kt., C.I.E.,  
Bombay.**

(*Bombay, the 27th October 1928.*)

*Chairman :* Do you belong to the Nagar community?

*A.* Yes; I belong to the Wadnagar Nagar community.

*Q.* Have there been any conferences of your community?

*A.* Yes; there have been some social conferences.

*Q.* Have the conferences dealt with this question?

*A.* So far as I know my particular community has not dealt with this question. But other communities might have dealt with this question.

*Q.* Is it a fact that there is an attempt to fuse all the sub-castes of your community?

*A.* The attempt was made and is now being repeated.

*Q.* Amongst the Nagar community what is the marriageable age of girls?

*A.* At present it varies from 12 to 13 to 20 to 21.

*Q.* Do you mean that the advanced people go in for the later age?

*A.* There are girls going for higher education and they prefer to remain unmarried until they get their degree. My daughter-in-law took her degree when she was 24 and was married at 25.

*Q.* Do you think there are a large number of cases of marriages at 13 and 14?

*A.* Formerly there was a prejudice against marriages after puberty. Now that prejudice is practically dead. It might be still alive in some of the families. But generally pre-puberty marriage has almost disappeared.

*Q.* May I take it that you are conversant with the customs that exist amongst the Gujarati-speaking population generally?

*A.* Yes. I am.

*Q.* Do you think that amongst the Banias and the Bhatias there is a large number of early marriages?

*A.* They prefer marrying their girls at 13 or 14 and sometimes a little earlier.

*Q.* You might probably be aware of the fact that there are many widowers of an elderly age say 35 or 40, who have perforce to marry virgin girls of 13 or 14?

*A.* I do not see why they have to marry. But I know of such cases, but they are very rare. As a rule the marriage is between a man of 35 or 40 and a girl of 14, 15 or 16. but always under 18.

*Q.* Amongst these castes where widowers marry young girls, do you not think that the marriage is soon after followed by consummation of marriage?

*A.* Yes; when the husband is about 30 or so I fear that the consummation follows soon after puberty.

*Q.* What about those cases in which early marriage is performed as a matter of custom? In those cases also is marriage soon after followed by consummation?

*A.* Amongst the Banias and Bhatias the difference between the ages of the bride and bridegroom is seldom more than 5 or 6. In that case con-

summation will be postponed till the boy is 20 or 21 and the girl will then be 15 or 16. Even here it is so only in the literate classes. In the same community there are deviations. Advanced people would not like to send their daughters to their husbands' houses till they are 15 or 16. But the orthodox people do not see any objection in sending them earlier.

Q. Would you not say that the proportion of the orthodox people is a very large one?

A. Yes, unfortunately.

Q. Would you therefore say that amongst the majority of people there is consummation soon after marriage?

A. I think it would be reasonable to say that consummation takes place between 14 and 15.

Q. Do you think that in all cases consummation takes place after puberty?

A. Pre-puberty consummation is almost unheard of, it practically never takes place.

Q. Do you think that consummation soon after marriage and of girls of 14 or less than 15 is common?

A. Yes; I think so. It would be more than 60 per cent.

Q. Can you tell us what is the effect of early consummation on the girls and on the children?

A. The children are as a rule weak. But I have known of cases where children born to fathers of 18 and mothers of 14 are healthy and live to a long age. However, most of the children die young. I think that the high infant mortality is partly on that account. There are other reasons also but this is one of the reasons.

Q. In the case of girl-mothers at 14 and 15 do you think that their health suffers?

A. The health of the girls does suffer. There is no doubt about it.

Q. Have you reason to believe that consummation takes place in many cases before 13 complete?

A. I think those days are gone. They used to be practised some years back, but those days are gone.

Q. You have not told us what law would you prefer, the law of marriage or the law of the age of consent. You only say that you would have 16 as a compromise in the case of marital relations.

A. I would like to have both the laws. But the age of marriage for girls to be 14 and the age for boys 20.

Q. What would be the age you would fix in marital as well as extra-marital cases?

A. Marital cases 16 and extra-marital 18. In extra-marital cases I would have put it higher, but I have put down 18 as a compromise.

Q. We are told that amongst many Gujarati-speaking communities in Bombay the question of the age of the girl or the question of puberty does not arise, but that as soon as the marriage takes place, whether the girl be 12 or 13, she is sent to the husband's house and consummation takes place immediately after, in a number of such cases. Is that so?

A. There may be very few cases of that kind. I would not say there are a number of such cases. But the consciousness has awakened in the minds of orthodox people also and even the ladies are now alive to the evils of such consummation.

Q. I understand that in your community marriages of girls take place at a very advanced age. Comparing the results on the mothers and the children with regard to these girls and the other girls who have consummation at 14 or 15 and whose percentage you said would be about 60, would you say that there is any difference?

A. The health of the elderly mothers is decidedly superior. Where consummation takes place earlier the health of the girls is likely to be shattered. As regards the children I cannot speak with definiteness. I think infant mortality is less amongst those girls who have consummation at an advanced age. But I cannot say whether physically the children are stronger. Though consummation takes place at a fairly late age in our community who come from Kathiawar and the people in Gujarat, yet we are stronger and the Gujaratis are weaker in health. I therefore think that comparison would not be fair.

Q. Do you know anything about the Brahma-Kshatriya community?

A. I have got some friends amongst them.

Q. I am told that it is one of the communities where marriages take place late.

A. As a matter of fact there is competition between the Nagars and the Brahma-Kshatriya community. These two are advanced communities. Amongst them marriages take place at a very late age. The girls of the Brahma-Kshatriya community are strong and their progeny is good.

Q. When do the marriages take place amongst the Brahma-Kshatriya community?

A. It is later than 16; sometimes 18 or so.

Q. Have you any knowledge of the Parsi community?

A. They marry late; but I would not like to offer any opinion on them.

Q. Do you know of any castes in whom there is no advanced wing, and who do necessarily marry young?

A. I know only two such communities in Bombay, the Baniyas and the Bhatias.

Q. Supposing a marriage law is enacted, what punishment would you have for breach of the law? Would you have fines only or imprisonment also?

A. The question is a very delicate one and one cannot give any definite opinion. A light punishment would be useless, but at the same time severe punishment like imprisonment would practically ruin the life of the girl who cannot be held responsible. If the husband is sent to jail, it means that not only does he suffer but through him the girl wife also suffers for no fault of hers. It is a question that has to be faced from all sides. I think the Committee would be able to solve it much better.

Q. In your experience in the last 30 years have you ever heard of a husband having been given severe punishment for offences within the marital rights?

A. I have not heard of it. But at present the age of consent is very low and it is very seldom that such cases come to Court.

Q. Do such cases occur or not?

A. They might be occurring, but they do not go to Court.

Q. What do you think is the strongest reason for their not coming to Court?

A. The feeling of shame and scandal attached to it.

Q. If that is the principal and a powerful reason, do you think that any amelioration by way of reducing the punishment or holding the trials in camera will help to bring to light such cases?

A. The trials might be held in camera. I will not have any interference from the police, and I would make the cases non-cognisable. Vigilance Associations and Social Reform Associations should be given powers to report such cases.

Q. Even now below 12 Vigilance Associations and Social Reform Associations have the right to do so as members of the public and yet we have not got any cases. How is that?



A. I think that is because almost all communities are advanced enough not to allow consummation under 13. That is why I have suggested legislation more for its educative effect and for raising the moral tone of the people. Otherwise I would not recommend legislation like this in social matters. I think legislation will gradually raise the marriageable age and consequently the age of consummation. People like to live up to the ideals of legislation.

Q. Do you know anything about the registration of births in Bombay?

A. I know very little. I have no personal experience.

Mrs. Nehru : You say that if the age of consent is raised, people will act up to it. How will they act up to it if they have not done so far?

A. I believe the Act when it raised the age of consent had its effect. There is no doubt about that. In old days consummation was taking place at a very early age and the new Act had some effect in raising the age of consummation. Gradually it is having effect.

Q. Do you think that the present law is generally known by the people?

A. Yes; by the people whom I know the law is known. Educated people who come into touch with public movements do know about it. But if we take the masses and the rural population they do not know. But in their case owing to the hard life the people live and open air in which they live, I think the tendency to early consummation is much less frequent than in the case of cities where the environments lead to early consummation.

Q. If the power of complaint is given to social reform organisations, and at the same time the age is raised to 16, do you think that a great many cases will come to light?

A. Yes; greater than they do now.

Q. For that purpose would you like the punishment to be reduced?

A. I would like to give no opinion on that. I would like the punishment to be deterrent but at the same time it should be such as will not ruin the life of the girl. It is for the Committee to find some way which will be effective.

Q. Do you think that if bonds are taken from the parents of the girl and the boy and if the boy is over 20 years from the boy himself to keep the boy and the girl separate it will be effective?

A. That will be one of the measures. But over and above that there ought to be some punishment also in case the bond is broken.

Q. By whom would you like such cases to be tried?

A. You can give the power to honorary Magistrates.

Q. How many?

A. I would like to have a bench of two or three.

Q. Would you like to confine the selection of Magistrates to any particular class or community of people belonging to the same community?

A. The honorary Magistrates will be nominated by the Government. Sometimes it happens that there are very few honorary Magistrates from the community in which the offence has taken place.

Mrs. Nehru : You say there is a certain class of persons who do not think the existing law unsatisfactory so far as it affects the consent within the marital state. Is it a very large class or only a few people?

A. People who have given thought to the subject think that it is unsatisfactory. But there is a class of people who do not give thought to it and consider that it is not unsatisfactory.

Q. It appears that the masses neither take much interest in this nor do they give much thought to it.

A. Unfortunately, they do not.

*Mr. Mudaliyar :* You must have noted the agitation that took place when the age was raised from 10 to 12. Do you think that the present agitation is as great as that agitation?

A. Oh, no. At that time it was the strongest agitation that we had seen in this country. It was led by the orthodox people and in some cases by men of learning. Men like Sir Romesh Chander Mitter led the opposition. Men like Manilal, a fine scholar and philosopher, led that movement.

Q. May I take it that the dissatisfaction and agitation against an advance in the present law will be very little as compared to what it was at that time?

A. I don't think there will be much dissatisfaction and opposition. There may be a few criticisms in the press. I don't think there will be any mass meetings held or any other demonstration of this sort.

Q. You are of the opinion that if the age is raised to 16 there may be some violations of the law here and there but generally the effect will be that the people will abide by the law.

A. I should think so.

Q. In that case don't you think that if deterrent punishment is awarded to the husband though it may ruin the life of one girl the effect on the general body of people will be so much better?

A. Might be. Even then I would not ruin the girl who herself is not responsible.

Q. Would you like these cases to be compounded?

A. There need not be any compounding.

Q. Supposing as you have suggested the age is raised to 16. There may be cohabitation when the girl is 15 years and 6 months, say, and there may not be any injury, and yet there will be an offence committed. Don't you think that in such cases compounding may be allowed, the husband and the wife may be allowed to be reconciled.

A. I would like to have a lighter punishment in such cases. The Magistrate will take all these points into consideration.

Q. You are in favour of giving the right of complaint to Social Reform Organizations. That is in addition to the parents and guardians of the girl.

A. Yes.

Q. If you extend the right to Social Reform Associations why should it not be extended to the general public?

A. I do not want any black-mailing. I am chary of giving this right to the public.

Q. But there is the remedy against false charges.

A. If there is a recognised body, although it may not be formally registered, it will realise some responsibility which the men from the general public do not.

Q. You say in India societies are not registered. In what way will they be recognised?

A. I believe Vigilance Societies are registered.

Q. Would you then confine this right to registered associations?

A. Yes. But Government can recognise some associations although they need not be registered. There are many societies which though not registered are doing very good work. But probably when the Government will recognise them they will insist on registration also.

*Mr. Mitra :* You say there are no religious injunctions sanctioning consummation of marriage before, at, or even immediately after puberty.

A. So far as I know, there are none. I know some Smrities are quoted. I would not call them religious injunctions.

Q. Are they for marriage or consummation of marriage?

A. The Smriti injunctions are for marriage. We read in certain books of Kalidas that one of the duties of the husband is to give child to the wife on the 4th day. There are some stories like that.

Q. Is it mandatory or recommendatory?

A. I don't know. I know there are certain stories.

Q. Do you find that the educated girls are more healthy?

A. The strain of education is counterbalanced by the strain of motherhood and it will be very difficult to say which strain is greater. It is true that the strain of education is heavy. Those who want to specialise in some subject and those who take honours course their health does suffer but after deterioration they pick up much better than those who suffer on account of early motherhood. In fact girls are prosecuting their studies after their marriage these days. When there are early marriages the chances of higher education are very much reduced. The well-known lady in Allahabad was married when she passed her Matriculation examination and her college studies were deterred on account of her being a mother. She had to drop a year or two. She continued after motherhood. She had two or three children. Her health is really good at present. So that, it does not mean that education has necessarily a strain on the health of the girl.

Q. In case of early marriage there will be double strain, of education and early motherhood.

A. Yes. In the case of the daughters of the above lady, they were not married till their college days were over. They were married only after they graduated.

Q. You don't think there will be any very great agitation amongst the orthodox people if the age is raised to 16.

A. I don't think so.

*Moulvi Muhammad Yakub*: Would you prefer a law on the lines of Sarda's bill or would you like the age of consent increased?

A. I would like to have both.

Q. Which of them would you prefer, which would be more effective and more suitable to the conditions of India?

A. I give equal importance to both.

Q. Outside the marital state you want to raise the age to 18. If it is fixed so high don't you think that there may be some cases in which a girl of 16 or 17 may induce a boy of tender age for an immoral purpose? In that case the boy will be punished while the girl will have no punishment, she will go scot free.

A. I would not say that such cases will never occur, but they will be very rare. I would always throw the blame on men and not women.

Q. But if she is the chief offender, why not?

A. I don't think it is possible.

Q. As regards marital cases are not the family conditions in India such that it is only the parents of the bridegroom who are responsible for bringing boys and girls of tender age together and give them an opportunity to consummate marriage?

A. I don't think you can say that it is only the parents who are responsible for this. There are certain communities where this formal ceremony of sending the bride to the bridegroom's house takes place much later after the marriage. But in certain castes it does happen that the girl is immediately sent to the house of the bridegroom.

Q. So that, if the parents take care, if they do not provide those facilities for them to live together there will not be any case of cohabitation before the prescribed age. They give facilities for the breach of the law. Would you therefore also suggest any punishment for them?

A. Technically, yes.

Q. What punishment would you suggest?

A. I am prepared to give "none."

Q. What is the age of marriage that you would fix for the girls?

A. Fourteen.

Q. For boys.

A. Twenty.

Q. Don't you think if boys are married at such a high age as 20 there is danger of their falling into immorality?

A. I won't mind that. It will raise the tone of the whole nation. We will have to pass certain difficulties, we must be prepared to face them. It is much better that we combat those difficulties and go ahead. Merely for the sake of one case here and one case there we should not stop the progress of the whole nation.

Mr. Bhargava : You have said that age of marriage for girls should be fixed at 14 and for boys at 20. So far as the advanced section is concerned they will accept even 16 for girls but so far as the orthodox section is concerned they will be as furious at 14 as at 16.

A. So far as Bombay and Gujerat is concerned if the age is raised to 16 I don't think there will be much opposition. My community would not object, the Brahma-Kshatriya community would not object, but the Bhatias and Banias may object.

Q. Will the opposition not be so serious as to merit any great attention?

A. If you raise to 16 there may be strong opposition even amongst these communities.

Q. Are you of the opinion that if the age of consent is raised to 16 and the age of marriage is also raised to 16 the opposition in both the cases will be the same?

A. It will be larger in the case of marriage.

Q. And it is on account of that that you suggest 14, not because the majority of the communities are not prepared for it.

A. Yes.

Q. Then there is the question of widowhood. If a girl marries at the age of 14 and the husband dies within a period of 2 years she becomes a widow who will have had no consummation.

A. But her physical body, and her moral stature are not reduced.

Q. If the age of marriage is fixed at 14 and the age of consent is fixed at 16 will there not be some virgin widows?

A. We will fight for it later on.

Q. You suggest that within the marital relations the offence should be non-cognizable. In all these cases when the girl's age is less than 12 the best evidence would be the effect on her body and unless the police takes cognizance you cannot secure that evidence.

A. A girl of 12 may be frightened at the medical examination.

Q. You have to look at the other side also. A girl of 13 or 14 will not be frightened. A lady doctor would see her. Almost everywhere we have got lady doctors. Otherwise the best evidence will disappear.

A. I do not object to that examination. It may have to take place when you have to go to Court. You cannot have it in the beginning before a case is regularly instituted.

Q. Do you not think that the effects will disappear by then?

A. It is more for medical men to say.

Q. And then since in such cases the policy is to enforce the law strictly it may happen that the relations of the wife and the husband even in cases where the girl is below 12 may not bring these cases to light. If the offence is made non-cognizable these cases will never come out.

A. I would stick to what I have said.

Q. You said that a honorary bench of Magistrates should try these cases. May I know what objection you have got to stipendiary Magistrates trying these cases?

A. In the first place they are not in touch with public opinion. They have not the confidence of the people and naturally they would be very careful not to inflict a punishment which might ruin the girl.

Q. Have these honorary Magistrates the confidence of the public?

A. In some cases "yes" and in some cases "no." Sometimes the nominations are not such as they ought to be. Let us get stronger non-officials.

Q. Don't you think that these honorary Magistrates are amenable to local pressure and cannot be trusted to try these cases?

A. So many things have been said about political parties, do you mean to say we should not have them therefore?

Q. Would you have any objection if we have one stipendiary Magistrate and two honorary Magistrates?

A. I have no objection if the Committee so decides.

Q. You have said that recognised Reform Associations should be allowed to make complaint. What is exactly in your mind? How should they work? Should they be able to report only or do something else also?

A. They may have branches all over the country. They mix with the people, they move about, they get information and they are more in touch with the people, they go and make enquiries. They do all this business of going about and making enquiries. I believe Miss Engineer, who is one of the workers, and who I think has appeared as a witness before the Committee, should be able to give all these details.

Q. But such associations are not to be found in places other than big cities.

A. But we should have branches all over India. During the last two conferences that met here we have passed resolutions, although they are pious resolutions only to start branches all over the country.

Q. In the absence of these would you like to give this power to a sub-committee of the municipality or the district board?

A. That would be better than giving it to the police.

Mr. Kadri: A suggestion has been made that we might have a matrimonial court to try these cases. Would you like to have such a court? Would that do for the trial of these cases?

A. I think so.

Mr. Kanhaiya Lal: You are not in favour of making the offence cognizable. Would your objection be met if we require that these cases should be investigated by gazetted officers of or above the rank of Deputy Superintendents of Police?

A. I would have no objection. But most of these powers can be and are delegated to lower men. It is the lower men whom I am afraid of.

Q. If the Court requires that these cases should be investigated by no other officer than the gazetted officer then the powers cannot be delegated.

A. If the police can behave in this way in Hyde Park in London what about India?

Q. Suppose we require that in all these cases a preliminary enquiry should be made by the Magistrate before he issues summons or notice would that meet your objection?

A. It would to a certain extent.

Q. You are probably aware that there is a feeling among the people that after the marriage has taken place the husband is entitled to approach his wife.

A. In my community it is never. The wife is only sent to the husband after the Annu ceremony.

Q. If the wife is sent before she has attained a prescribed age would you make the parents or guardians of the girl liable?

A. I would as abettors.

Q. You would also make the parents of the boy similarly liable if the boy is under age.

A. I could not make up my mind on this point till the last moment. As abettors I would punish parents of both the bride and the bridegroom. But it may lead to estrangement of feelings. I will deal with the boy and the parents leniently.

Q. In view of the fact that any punishment might lead to an estrangement of feelings do you not consider it desirable that they should be allowed to settle the matter outside the Court?

A. I would stick to light punishment. Some punishment should be there.

Q. If they are allowed to withdraw with the sanction of the Court?

A. I would prefer a light punishment. It is a point on which there will be difference of opinion.

Q. You recognise the essential difference between a marital offence and an extra-marital offence committed by a stranger.

A. I do.

Q. Would you place them under two different categories and not tar both of them with the same brush?

A. The extra-marital offences should be meted out as severe punishment as possible.

Q. Would you like that they should be placed under two different categories?

A. I would.

Q. Would you further recommend that if there is a law fixing the age of marriage and the age of consent there should be compulsory registration of marriages also, giving the names and ages of the marrying parties to enable the public or to any other person interested to ascertain if there is a breach of the law.

A. I will divide the question into two parts. The higher classes amongst us usually have their marriages performed by a priest. It is a well-known fact that the ages of the bride and the bridegroom are also mentioned during the recital of the "Lagan Patrika." So far as they are concerned I don't think this registration would be any more helpful. As regards communities who are not so advanced or who will not go through all the religious ceremonies as carefully as we do, it would be useful.

Q. Therefore would it help investigation if we have compulsory registration of marriages?

A. That question came up before the Bombay Government and I was opposed to it because I thought it may be one way of squeezing money from the poor agriculturists. I fear it may lead to fresh taxation.

Q. If there is no taxation following this scheme then you would have no objection to it.

A. As soon as it is started, Government is sure to say more money has to be spent. The general tax-payer should not be burdened.

Q. But there is no taxation attaching to reports of births and deaths. These reports are recorded free of charge.

A. Because the municipalities do that and all that is included in the municipal tax. This would be a new thing, and I fear, it may mean new taxation.

Q. If we place the duty of keeping a record of marriages on the municipalities or district boards, would that meet your objection?

A. May I give one instance. In one of the Indian States with which I was concerned a levy was made for "Kanya Chauri." It was a small sum

of 8 annas or so. Even then there was strong opposition and when the Maharajah removed that, they considered that it was a blessing.

Q. Is any taxation levied for registration of marriages in Baroda?

A. I don't know.

Q. You have said that Social Reform Organizations and Vigilance Societies might help us in detecting crime. If there is no legislation regarding the registration of marriages how would they ascertain the ages of girls. They may not have private sources at their disposal?

A. I know this is an argument in favour. In spite of that I would not go in for that legislation.

**Written Statement, dated the 11th August 1928, of Miss M. KATHERINE DAVIS, B.A., Secretary, The Children's Aid Society, Children's Home, Umarkhadi.**

As I have received three questionnaires regarding the age of consent besides one sent me as the Secretary of the above society, I am submitting the following opinions in my private capacity, a further statement of the wishes of my committee may follow subsequent to their next meeting on the 22nd instant. I have further to point out that the replies I have to offer to the questionnaire are somewhat meagre as they are based on the extremely short period in which this home has been open, viz., 16 months.

#### *Replies to Questionnaire.*

1. Yes, there is dissatisfaction with the present law regarding the age of consent. All engaged in social work realise the imperative necessity of further legislation and the meeting organised by the Bombay Presidency Women Council in June last on this subject testifies to the demand made by educated women in Bombay.

2. The circumstances which in my opinion justify making an advance on the present law are as follows:—

##### *(1) Physical considerations—*

(a) The present ages of 13 and 14 are far too low. On such a basis a married girl may be a mother at 14 years of age and an unmarried girl aged 14 is not sufficiently mature to realise what consent entails.

(b) The age of consent for married girls is little protection so long as legislation is non-existent fixing a higher minimum age for marriage. Close contact tempts the husband to ask for sexual relationship before the age of consent has been reached, or immediately it has been attained when the girl is very immature and shrinks from a married life. During the past 16 months the following cases have come to my notice in illustration of the above:—

(i) Six runaway wives aged 14, 14, 14, 15, 12 and 12 years, 3 alleging the cause of their running away to be due to the husband's demand for physical intimacy and the 4th on account of cruelty and 2 because of ill treatment from husband's family.

(ii) One runaway wife aged 11—raped by an elderly husband. Although medical evidence in Bombay stated the girl to be 11, the husband got off in Court by producing an up-country horoscope testifying the girl to be over 13. He still demands possession although the girl has been in this home 1 year.

(2) *Moral considerations.*—The age of consent as it now stands legalises girls of 13 years to lead a married life. At such an immature age

they are prone to become tools of bad parents or bad husbands.  
For example—

- (a) Two cases have come to our notice of girls aged 14 and 13 the former of whom was placed in a brothel by her husband and the second who was charged for theft in the Juvenile Court where it was manifest that the thefts had been instigated by a gambling husband.
- (b) Four other cases have come to our notice of girls aged 14, 14, 15, 12 who have apparently been seduced with the connivance of the mother.
- (c) Three other cases have been admitted here of young girls aged 11, 12 and 12 who have been legally married by designing parents who have received money on the conclusion of the contract and who have subsequently tutored the girls to make false accusations against the husbands in the hope of getting the girls back and then making more money on a fresh contract. The higher the age of consent, the less chance of husband being willing to contract marriages with girls aged 11 and 12.

(3) *Economic considerations.*—The lower the age of consent the greater frequency of child marriages will occur. Such marriages prove disastrous not only through the husband's lack of control but through the mother-in-law seeking to make the little bride a family drudge. Two cases have come to us of runaway upcountry brides aged 11 and 14 who have run from their husbands' houses to escape the mother-in-law and have eventually been picked up destitute in Bombay.

3. *Frequency of crimes of seduction and rape in Bombay.*—During the past 6 months—the following cases have been brought to this home:—

1. Seduction—2 cases of girls of 14, mother privy.

2. Kidnapping and rape—

2 girls of 11.

2 girls of 12.

1 girl of 14.

1 girl of 15 (legally rape not committed because of age).

3. Rape—

1 girl of 14 (against her will).

1 girl of 11 (by her husband).

1 girl of 8 (by a Pathan).

4. *Repeated rape.*—One girl of 12—who alleged, she had been sold at least 2 times and raped 4 times during the past four years.

The age of consent for unmarried girls should be raised by law to 16 years and for married girls to 14. Marriage of girls less than 14 years of age should be prohibited by law.

6. *Cohabitation.*—Of the 103 girls all under 16 years of age, admitted to this home in 16 months—a high proportion have been found on medical examination to be either not in fact or doubtfully in fact. (Exact figures cannot however be given).

9. The attainment of puberty is not a sufficient indication justifying consummation of marriage. Sixteen years should on medical grounds be the minimum age for consummation.

13. Yes, as already stated under 1.

18. Regarding procedure in trials for offences within and without the marital state. Magistrates should be advised to make use of that section in the Code of Criminal Procedure whereby courts can be cleared and evidence taken privately. Many of such cases are too often heard quite publicly.



19. Where Remand Homes for children exist as in Bombay the girl child should be remanded into custody thereat to protect her evidence from contamination.

20. Legislation fixing the minimum age for marriage at a much higher age would have more protective force as it would prevent child-wives living in proximity to a husband whose sex-control amidst the crowded conditions of a poor man's life is not beyond temptation. Legislation would however have to fix a higher age of consent (16) for unmarried girls.

21. The law should be amended and steps taken for the education of public opinion by fixing a fair time limit of from 2 to 3 years and by circulating the Bill to local bodies and societies and urging local Governments to take steps to encourage the progress of social reform by means of education and social propaganda.

In conclusion I would add that the experience of working the Children Act in Bombay has been that cases of child-wives aged 13 and over have no means of protection within its scope and until a high minimum age (14, if not 16) for marriage has been fixed and a higher age of consent (16) for unmarried girls has been provided—early adolescent girl life lies in danger.

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**Oral Evidence of Miss M. KATHERINE DAVIS, B.A., Secretary, the Children's Aid Society, Children's Home, Umarchadi, Bombay.**

*(Bombay, the 27th October 1928.)*

*Chairman:* Are you the Secretary, Children's Aid Society?

A. Yes.

Q. May I know what this society is? Is it a missionary concern?

A. It is a Remand Home for the working of the Bombay Children's Act. In this Home there is a preponderance of boys. It has been in existence for the last 18 months. We have had 721 children ever since we started and only 127 of them were girls. These children are only temporarily with us till the case is settled in the juvenile court.

Q. Who brings you these girls? Does the police bring them?

A. Under the Bombay Children's Act they are brought to this Home.

Q. Then you are appointed by Government as Secretary in this society.

A. I am a paid secretary of an aided society.

Q. How long do these girls remain with you?

A. It all depends whether it is an up-country case, or Bombay case. Up-country enquiry means time. We would like to keep them longer. We find these under 16 who have been in brothels are always suffering from venereal disease. To give medical treatment we keep them for an extra time. We have got 29 girls of which 6 have been with us over a year.

Q. You mean to say that these girls remain under your protection till after the juvenile court has decided their case.

A. Only until then.

Q. What do they do then?

A. Whatever the decision of the court is. We only have children under 16. Children who are above that age are sent by Government to other certified schools.

Q. You want to raise the age on the ground that the girls of 13 are not mentally fully developed.

A. This is one of the grounds. I have physical grounds also. Girls of that age are unable to take care of themselves and their children. Girls of this age who are driven into this life suffer physically, morally and mentally. We have had cases of girls of 8. I must say my experience is

very limited. I have been in Bombay for 4 years only. But we get, I presume, most exceptional cases. Still there they are.

*Q.* You say the age of consent for married girls should be 14 and for unmarried girls 16.

*A.* I feel 16 is the ideal. If 14 is fixed it will be a step in the right direction provided it is followed by the people. I do feel that 14 is not going to be much protection.

*Q.* You suggest 14 for marriage. Would you like to keep any difference between the age of marriage and the age of consent?

*A.* I think it ought to be the same age. I feel so far as the lower and uneducated classes go if there is a difference there will not be any check on consummation after the marriage has been performed. Still I think if the age of consent is higher it is better.

*Q.* Would you therefore have 14 for marriage and 16 for consent?

*A.* Yes.

*Q.* What age would you fix for extra-marital cases?

*A.* Logically it ought to be 18, but 16 would be the first step. 18 is the ideal.

*Q.* Do you want to emphasize any difference between your personal views and the views of the society?

*A.* There are one or two points. It is most desirable that the Children's Act should be so amended whereby the courts may be empowered to deal with these girls. They should have the power of sending them to some certified school or to some fit person. A girl who is discovered at the age of 13 and who probably might have been leading a regular married life requires very special protection. I do think that provision ought to be made for sending these children to certified schools. I would also like to state that on account of the age for extra-marital cases being too low there is a great deal of seduction. I am speaking of the Anglo-Indian community where there is tremendous amount of seduction going on. I have done rescue work for about 2½ years in that community and I know there is lot of seduction going on. The young girls are absolutely at the mercy of evil parents who deliberately profiteer out of them.

*Q.* What is generally the age of the girls who are seduced?

*A.* Between 14 and 18. They are being misused with the connivance of parents.

*Q.* Are they of poor families?

*A.* Not always. Poverty is the excuse.

*Q.* In answer to question No. 6 in the Society's note it is said that cohabitation is not common before puberty or before the attainment of 13 years but it is common soon after puberty. I take it that consummation takes place only after 14 or 15.

*A.* We get mostly poor class girls. At present there are 10 married girls. Of these 4 consummated marriage before puberty, 2 immediately afterwards and one, one month after and only three have not consummated marriage.

*Dr. Beadon :* What was the age of the girls that consummated marriage immediately after puberty?

*A.* Fourteen. We had a case of a girl of 11. She was wronged by her husband 5 different times. Although medical evidence in Bombay showed that the girl was 11 at the time of the offence yet up-country evidence was produced which satisfied the court that the girl was 15. She is a big girl and she seems to be quite mature.

*Q.* What remedies would you suggest for ascertaining the exact age of the girl?

*A.* There must be compulsory registration of births.

Q. Can you suggest any improvement in the present system of registration?

A. I cannot say about that.

Q. You have not seen any case of maternity.

A. There are only two girls who have had children.

Q. Have they suffered from any disease?

A. We had about 44 cases of venereal disease since we started. Some of them were boys, but mainly the cases are among girls. At present we have got 19 children suffering from venereal disease. Seventeen of these are girls and only 2 are boys.

Q. What are the ages of the girls?

A. The youngest one is 10 and the oldest is 16.

Q. In the case of the girl of 10 was that a marital case?

A. It was an extra-marital case.

Q. What about the children who suffer from this disease? Does it last long?

A. It is a very long business. I have maintained them for 15 or 16 months sometimes. They require regular treatment and sometimes they go before being cured.

Q. What were the ages of these girls who consummated marriage before puberty?

A. Not more than 13. But their statements are not reliable. The other girl who consummated marriage one month after puberty was bigger. She must be 14 or 15.

Mrs. Nehru : Can you tell me the maximum and minimum ages of girls that come to you?

A. The maximum is 16 and the youngest we have had was 12 months.

Q. How did she go to the court?

A. She was in the arms of a sister aged 20. She was brought to us with her sister. We have had two cases like that.

Q. Do you teach anything to these girls who come to you?

A. It is very difficult. They are very very illiterate. We have got a full programme but these girls are not with us for a long time and it will take some time before that programme is put into practice.

Q. From what community do these girls generally come?

A. They come mostly from the Hindus. I cannot give their caste. At present we have only got 3 Mohammadan girls including the Pathan girls and the rest are Hindus.

Q. Do they come mostly from Bombay or outside towns?

A. I have got more up-country girls than Bombay girls. We have got 2 Bombay girls and 3 up-country girls.

Q. In these cases that you mention in paragraph 3, 2 girls of 12 and 1 of 14 did the girls consent?

A. The girls were as much to blame as the men. The girl of 12 consented. She was an up-country girl.

Q. What is your reason for suggesting 16 for extra-marital cases? Would you not fix it at 18?

A. There would be difficulty in working it. If there were no difficulties I would prefer 18.

Mr. Mudaliyar : What is the nature of the difficulty you apprehend in extra-marital cases? You say it may not be workable, why do you think so?

A. It will be very difficult to get sufficient amount of evidence.

Q. That difficulty will arise whatever the age may be.

A. That is the main difficulty I anticipate. Ever since I became interested in this rescue work I have come across many such cases of young girls but it is very difficult to prove legally.

Q. So far as brothels are concerned would there be any difficulty?

A. No. That would be a great advance.

Q. May I take it that in the cases that you mention in answer to question No. 3 only those relating to brothels were involved in these offences?

A. They are cases quite outside the brothels.

Q. How did the girls come to you?

A. When the girl has been kidnapped and there is no guardian or perhaps the guardian is suspected the child is brought to us.

Q. Wherefrom do you get these facts about ages, etc.? Is it from the girls themselves?

A. Yes. We get their evidence in the court. They appear as witnesses.

Q. The first two cases that you mention under 3 (3) were cases of alleged rape by husband, i.e., the girl complained against the husband as she was below 13 when consummation took place. We were told there were no cases brought to court against the husbands.

A. These are cases where the girl denies the marriage having taken place. The mother encourages the girl to make allegations against the man that he is not her husband as she hopes to get the girl back and make more money out of her.

Q. But they are abnormal cases. What is the social status of the persons amongst whom these cases take place?

A. They are very poor people.

Mr. Mitra: Have you got any knowledge of such rescue work in England or elsewhere?

A. No. My experience is limited to Bombay only.

Q. Can you say whether girls in India mature earlier than in England?

A. I have not got any experience. I think there is no difference. It is the same age, 13 or 14.

Mr. Bhargava: In answer to question No. 2 where you talk of moral considerations you refer to cases of cheating. These offences must have been the subject of criminal investigation. They have practically nothing to do with the raising the age of consent. They are likely to happen even if the age of consent is raised.

A. Yes. It is a crime at every age. It is in fact the man who is doing that.

Q. But these crimes will not be stopped if the age of consent is raised.

A. No.

Q. Have you come across a case when the girl was fully matured and even then the husband compelled or asked her to have recourse to immoral practices in a brothel?

A. I have got a girl of 14 or 15, who, on her own statement, and I have reason to believe it is true, entered a brothel because of the husband. That I think is quite often the case. If the age of consent is raised there is a less chance of such cases taking place. The married life is legalised at too low an age.

Q. As regards economic considerations, they have practically nothing to do with the age of consent. They are much more connected with the minimum age of marriage. Is it not?

A. Yes.

Q. You say in answer to question No. 6 that of the 103 girls admitted a high proportion was found to be not in tact or doubtfully in tact. You have said that venereal diseases are very common. This state of affairs may therefore be due to venereal disease. Is it so?

A. This is due entirely to early cohabitation.

Mr. Kadri: On page 3 you refer to 3 cases of rape—one on a girl of 14, second on a girl of 16 and third on a girl of 18. In the case of first girl, was it against her will by her husband?

A. No, it was by two strangers. In one case the husband was accused.

Mr. Kanhaiya Lal : You suggest the age for marriage as 14 and the age for consummation at 16?

A. I would rather have both the same.

Q. Do you think if you fix the age of marriage at 16 there will be fewer cases of this character?

A. Yes.

Q. How would they be fewer?

A. I think there is tremendous temptation for little girls living with uneducated and uncontrolled husbands in very close quarters as is the condition in certain cases. It is more than human nature would stand. If the age is fixed at 16 for marriage and consummation alike, there would not be any such cases.

Q. If there is no law fixing the age of marriage, would you like to have a law fixing the age of consummation?

A. It will be very difficult; you must have a minimum age for marriage otherwise the thing would not work as well.

Letter, dated Bombay, the 10th August 1928, from Mrs. SARALĀ-BAI BHAVE, Mrs. MANORĀMABAI MALANKAR, Mrs. GANGABAI GOKHALE, Mrs. GANGABAI KUNTE, Joint Honorary Secretaries, Hindu Mahila Samaj.

In reply to your communication of the 28th instant, we beg to submit that Mrs. Avantikabai Gokhalay, the President of the Hindu Mahila Samaj, had been written to on the same subject by you and it was discussed in our managing committee and her reply has full support of the committee. Hence separate reply has not been sent.

#### Written Statement of Mrs. AVANTIKA GOKHALAY, President, Hindu Mahila Samaj, Bombay.

1. The masses who are mostly ignorant know little of this law and those who understand cannot have any dissatisfaction.

2. (1 and 2) In my opinion there ought to be an advance on the present law, as the present age of 13 is not sufficient from the medical point of view.

3. The general public only know of such cases only through newspapers and which are not many. This does not mean that there are not many cases occurring. Owing to the fear of losing the reputation of the family some cases may not be coming to light. The general knowledge that some such law exist must have some effect on reducing number of cases outside marital state or from improper seduction of girls for immoral purposes.

I shall by all means advance on the present law, say 16 to 18 years.

4. (i) Yes. By postponing the consummation of marriage.

(ii) There has been marked change for the better in the public opinion in the last ten years, but one should not wait only for the stimulating of the public opinion.

(iii) It is not uncommon among the middle classes that the girls are now married at the age of fourteen to fifteen in towns and cities. This is not enough. I should strongly recommend the age of marriage to be 16 and not under. This is sure to safeguard the age of consent.

5. The usual age at which the girls attain puberty is 13 to 14. In a few cases earlier.

The caste, community, class has not much to do with the age of puberty. I think it mostly depends on environments and economic conditions of the family.

6. (i) It is not common.

(ii) As a rule soon after the puberty.

(iii) In more cases this may happen.

7. The consummation of marriage at puberty is said to be owing to religious injunctions. I cannot quote any authority. There is penalty attached to it, which is some kind of "Prayaschitt".

8. Garbhadan ceremony is usually performed in these parts in high class Maharatta community. It is generally performed at the attainment of puberty (within two weeks).

9. I do not consider that the attainment of puberty which is generally understood by the commencement of monthly courses is a sufficient indication of physical maturity to justify consummation of marriage. I think age of 18 to 20 or some four or five years after the puberty, the girl may be considered fit enough to justify such consummation without injury for her health or her progeny.

10. At the age of 18 to 20 the girl would be intelligent to know the consequences.

11. I have had occasions to witness several cases of maternity where the sufferings and tortures of the young girls were unbearable to witness owing to the want of physical development. In many cases it results in prolonged sufferings on the part of girls and life-long deformity of body. In the villages there is generally no medical help and number of cases turn out fatal. This has been my experience in Gujarat and Champaran villages.

12. The high maternal and infantile mortality, is due to the following causes:—

(a) Early consummation and early maternity.

(b) Poverty of the people.

(c) The ignorance of the sanitary measures during pregnancy and maternity period.

(d) Too often bearing of children.

13. There has been further development of public opinion in these parts in favour of extension of the age of consent both in marital and extra-marital cases.

There have been a number of cases of public meetings, both of men and women, who went further than the contemplated advance of the age of consent. The public press without exception has advanced the cause. I should think it is general.

14. Women in this part of the country do not favour early consummation of marriage, as they were 10 to 15 years ago. This is owing to all round advance made by education.

15. Medical opinion and certificate of date of birth through Municipal record, Horoscope, etc., can help to minimise these difficulties.

16. Certainly, if the age of consent is raised to 16, the margin of error would be reduced, as the development of the body of the girl at that age is well marked.

17. I should separate extra-marital and marital offences. In the former the offences should have imprisonment for a long time and fine. In the latter heavy fine to the offender and his guardian if from a joint family. I think an imprisonment to a husband will have a serious evil effect on the girl in her future life.

18. The cases of married couples should not have detailed publicity. Even in England Divorce cases are not allowed to be fully reported now-a-days.

19. Not able to say anything on this.

20. Legislation fixing minimum age of marriage is decidedly better and more effective. It will be in consonance with public opinion to raise the age of marriage.

21. The progress of social reform by means of education and social propaganda has its own value, no doubt, but I prefer in this to rely on the strength of penal law and secure the object in view. Take the case of "Sati".

Though it had the so-called sanction of religion, it has been stopped and we rarely hear of it now. When the disease is severe it must have serious measures to stamp it. In short I prefer the raising the age of marriage of girls to 16 at once, which automatically raises the age of consent and avoid the risks and law suits and other evils associated with it.

### Oral Evidence of Mrs. AYANTIKA GOKHALAY, President, Hindu Mahila Samaj, Bombay.

(Bombay, 27th October 1928.)

*Chairman:* You say in answer to question No. 6 that cases of cohabitation soon after puberty are common and in many cases consummation takes place before the girl has completed 13. Do you know this does happen among certain class of people or it is general?

A. I think it is in Gujarati-speaking people.

Q. Does consummation of marriage takes place below 13?

A. Yes—soon after marriage, and marriage takes place very early. They have not got any ceremony of goana or garbhadan.

Q. Have you reasons to think that such consummation takes place usually?

A. Yes.

Q. Is there any other community in which this happens?

A. To my knowledge this happens in Gujarati community.

Q. What happens among the Dakhshinis?

A. They have a ceremony of garbhadan. Among them there are very rare cases where consummation takes place below 13.

Q. Have you any idea as to why the law of the age of consent has not been effective, i.e., why cases do not come to court?

A. In married cases people do not generally like to expose the family. That is the general feeling and that is why they do not come to court.

Q. By raising the age of consent will that motive be done away with?

A. Yes there will be some restrictions if it is properly spread out among the villagers and masses.

Q. Even if it is proclaimed, still as you say, the motive of family scandal is always there.

A. Yes.

Q. Then you do not expect it to be effective.

A. I think by the spread of education people are advancing.

Q. Do you consider the law of penalising marriages before a certain age is a necessary thing?

A. Yes, that is the root cause of all trouble.

Q. Do you think that if that law is passed it will be far more effective?

A. Yes.

Q. Do you think that would raise difficulties by way of people getting very excited over it?

A. I do not think so. There is always orthodox feeling but it will be very little.

Q. Have you had any occasion to talk with women of the middle classes among Gujaratis and Dakhshinis and been able to gauge what their sentiments are in the matter?

A. We had a meeting in the Samaj and there everybody was agreed for raising the age to 16. They did not even like 14.

Q. But in a meeting the mass opinion prevails—Have you had occasion to talk privately with people amongst whom this evil exists?

A. Yes, I had occasion to do it. The Samaj which I am representing consists of middle class people; there is no educated lady.

Q. Are there many Gujaratis?

A. There are Marathis and Gujaratis.

Q. Are you connected with any institution besides this Samaj?

A. I am connected with Rashtrastri Sabha. It was started at the time of Punjab disturbances and it is a sort of socio-political body.

Q. Have they passed any resolution?

A. I do not think they have received any intimation from you.

Q. Apart from this have they ever passed any resolution on this question?

A. No, we have meetings occasionally. We have occasion to mix with Gujaratis as well as Dakhshinis.

Q. What would be the percentage you think amongst the population, of marriages which take place below 13 or 14? Do you think it is quite a large number?

A. Taking into consideration the villages, I think it is a large proportion. In cities it is getting less and less even among Gujaratis.

Q. Have you any knowledge of the labouring class women?

A. Yes. I am connected with that also. Our Samaj goes and visits chawls here in Bombay and we do social work among them and distribute food and clothes. I know the percentage of early marriage is very great among them. They are generally Konknis.

Q. What is the usual age of marriage among them?

A. About 8—10 but the girl does not go to the mother-in-law's house immediately after marriage.

Q. Do you advise raising of the age to 16 for penalising marriages?

A. Yes, 16 for girls and 21 for boys.

Q. Don't you think if the age is raised to 16 it would affect very largely not only people who are going in for marriages but the people who marry their girls just about 16?

A. Anybody marrying up to 16 will be affected.

Q. Don't you think that will be very serious?

A. It is for the benefit of women that you do it.

Mrs. Beadon: Among these cases of early marriage what is the age of motherhood?

A. Yes, about 14 or 15.

Q. You say in your answer that they suffer much. Have you found any particular case in which the girl suffered afterwards? Is there any particular deterioration or trouble?

A. Yes they do suffer in villages where people cannot get medical help. I passed a couple of years in the villages as my husband had a match factory there. I have gone through the midwifery course. I have seen cases there;



without any help they get deformed for life because they cannot get any medical help and delivery takes place in an unnatural way.

Q. Do they get diseases?

A. Bodies are deformed because the bones are not developed properly.

Q. Do you mean to say they get osteo-malacia?

A. Yes.

Q. What happens to their legs?

A. Their back specially suffers. There is generally pain in the back and they cannot stand straight.

Q. Is that as a result of labour?

A. That is my opinion.

Q. How many cases have you seen like that?

A. That was 10—15 years ago. I found 4 or 5 cases.

Q. Have you seen anything like that in the chawls of Bombay?

A. No. Many deliveries do not take place in Bombay. They go up-country for delivery because there is very small space for them even to sit.

Q. They return after delivery?

A. Yes.

Q. Among those women who return have you found any case?

A. No.

Q. What about babies of young mothers of labouring classes? Is there much difference between the babies of young mothers and those of grown up mothers?

A. Yes. Mothers themselves do not know how to take care of their children and in Bombay there are many reasons for having unhealthy babies. There is no fresh air, there is no space and they do not get good milk. Chawls are simply dungeons.

Q. We have been told that 80 per cent. of the children of these mill workers die within the first year. Is that correct?

A. Yes.

Chairman: Do you think these women give opium largely to their children?

A. Yes.

Q. Do you think it has deleterious effect on them?

A. Not so much as it is exaggerated to be but it has effect.

Q. Would you not attribute mortality to that effect?

A. No.

Dr. Beadon: Is there any difference in the children of young mothers? Do they strike you in any way different?

A. Yes, they are weak. If they were brought up up-country they might have been healthier. The surroundings are unhealthy. It is partly due to economic causes.

Mrs. Nehru: The maternal benefits of which you spoke just now—are they given by co-operative societies or do you give them in charity?

A. Our Samaj gives them as a charity. We distribute some clothes and food.

Q. Have you noticed any change in infant mortality after the child welfare centres work which has been organised?

A. I do not think there is any change because in my opinion it is not enough. We want it at a larger scale.

Q. I visited a few creches and the children there seemed to be very well looked after and I was told that there are many others like that?

A. But still there is prejudice among these people. They do not send their children to creches.

Q. You say they marry early and consummation takes place later. Could you give any idea at what age marriage is generally consummated among the factory women?

A. At about 14 or 15. Even after marriage a girl lives with her parents up to that age.

Q. Do parents find any economic difficulty in keeping girls in their houses?

A. The girl is an earning member.

Q. What is the reason for their continuing to marry early?

A. It is only custom.

Q. In your statement you have said that those who understand the age of consent law cannot have any dissatisfaction. What do you mean by that?

A. After the age is raised they will not be dissatisfied for having this law passed.

Q. In paragraph 4 you say that the law has resulted in the postponement of consummation, etc. Do you mean to say that this raising of the age of marriageable age is as a result of law?

A. It is as a result of general education and reform movements that are going on in the country.

Q. In paragraph 5 you say that the age of puberty does not differ with classes. Why we asked this question was that in different communities and castes the mode of living and food is different and we wanted to know whether it affected the age of puberty?

A. Yes.

Q. You have referred to the punishment being reduced to fine only. Along with that, if bonds are taken from the parents of the girl or from the boy if he is over 18, do you think it will suffice as a form of punishment to keep the boy and the girl separate?

A. Yes, that would be good.

Mr. Mudaliyar: Would you have the same punishment in all cases whatever the age of the girl?

A. I do not suggest any imprisonment in marital cases; only fine should be imposed.

Q. Would you stick to fine whatever the age of the girl may be?

A. If the marriage age is raised there would be no offence at all. For the happiness of the girl I cannot suggest anything at all. We have no divorce law and the girl has to stay with her husband for the whole life.

Q. If the girl is of tender age and if the husband cohabits with her that would be very injurious for her. Would you like to retain the present law?

A. I would not like to change the present law. I would suggest that punishment should be heavier below a certain age—say 11 or 12.

Q. What is your idea of imposing a fine?

A. It will depend on the state of the people. I think it should be Rs. 2,000.

Q. Don't you see that the richer people will escape the law and the poor people will suffer very heavily even if it is a fine of Rs. 25?

A. It will be deterrent at least.

Q. Who do you think should report these cases?

A. That is the difficulty. The knowledge of the passing of this law should be spread as widely as possible. I would give this right to the girls' guardians.

Q. He will be most interested in not putting his son-in-law in jail? Would you like to leave it open to the public?

A. Yes, but not to the police.

Maulvi Mohd. Yakub: Since when has the child mortality increased in Bombay?

A. From the beginning.

Q. Since when do you find this change in the opinion of the public to raise the age of consummation?

A. Since the last 4 or 5 years.

Q. Has it had any effect on the mortality of the children now that the consummation of marriage generally takes place at a higher age? Has it reduced the mortality?

A. I do not think. The question is that the higher mortality among the infants is not due to early consummation of marriage; that is one of the reasons. There are so many reasons especially in Bombay, child mortality is in the labouring classes. Much better houses should be provided for them and better milk should be supplied for their children. Both these are the chief causes of high mortality.

Q. Can we say it is mostly due to insanitary conditions of housing and bad nourishment that this high mortality is due to?

A. Yes.

Mr. Bhargava: May I know what is the membership of the Mahilla Samaj?

A. About 200.

Q. And are they from the middle classes?

A. Yes.

Q. May I know that the average women of labouring classes would like this marriage law and the consent law?

A. I think they would like—especially the ladies.

Q. You just now stated that you want the marriageable age to be raised to 16 and 21 and you do not want that it should only be 14. Is it because you regard the evil of early marriage as very serious?

A. Yes.

Q. Even though there may be any amount of opposition?

A. Yes.

Q. You have said that the parents should also be punished. What punishment would you suggest in the case of breach of marriage law?

A. Heavy fine.

Q. In regard to breach of consent law you are in favour of giving punishment to parents also?

A. Yes, parents of both the boy and the girl.

Q. When a girl is sent to the bridegroom's house 20 miles away the parents of the bride have no control over her?

A. They can say that they would not send.

Q. If they do not send the husband may get annoyed. Would you limit the punishment to the parents of the bridegroom?

A. Yes.

Q. And when generally the bride is sent to the bridegroom's house the father does not know about consummation of marriage. It is the mother or other female relatives who arrange it. Would you hold the father responsible?

A. Father is generally the head of the family and he should know all these things.

Q. If you raise the age of consummation and if there is no law fixing the age for marriage, can you suggest any measures for bringing cases of infringement to light?

A. There should be some reward by the Government.

Q. You want to make the cases non-cognisable. While you are narrowing the source of information you want to give rewards for purposes of detection.

A. I cannot suggest any other way.

Q. Would you be in favour of registration of marriages?

A. I think that ought to be.

Q. You have further said that you are in favour of having light punishment out of sympathy in order that the girl may not suffer. Would you make marital offences on that ground compoundable?

A. Yes.

Q. In cases of serious injury would you further say that those cases should be compounded only with the consent of the court?

A. If there is serious injury the case should go on.

Q. But the court can consider the nature of the injury and can refuse sanction?

A. Yes, the court may have discretion.

### Written Statement, dated the 15th August 1928, of the Anjuman-e Zia-ul Islam, Bombay.

In accordance with the Islamic Law, the earliest age for puberty is (12) twelve years.

1. From experience, it appears that in India and especially in the Bombay Presidency, the Mahomedan Community does not permit the marriage to be contracted till the contracting parties have reached the age averaging between 12 and 14 and therefore the effect of the Law on the Community at large is not felt. In fact, the Law to enforce such a possibility is not necessary because it is already there.

2. The present Law is sufficient and we see no reason for a further change.

3. There is no increase in the offences and the present Law is effective.

4. (1) Refers to Nos. 1, 2, 3; generally consummation before the age of 13 was postponed and the amendment had no effect on the marriage of girl under 13. We have never read nor heard that a girl's marriage was postponed because she was under 13. People were not generally even acquainted with the Law. Had there been cases of marriage under the age of 13 and prosecutions resulted from consummation and people knowing the same promoted such consummation it may have been possible to say that the Law has produced its effect.

4. We do not want to give our opinion as it is against our religion.

5. Puberty is usually attained by a girl, between 12 and 13. Affluxion causes early puberty, poverty the reverse. In females the members which attain long life puberty appears late.

6. Mahomedans generally do not consummate marriage before the puberty of the girl nor before 13. We are not aware of any case where a Mahomedan has been prosecuted for rape on his wife before puberty.

7. There is no such injunction nor any penalty in the Mahomedan Law.

8. No.

9. Generally puberty is considered to be a proof for consummation of marriage though in cases of weakness it is deferred.

10. Thirteen.

11. No. This can be ascertained from the courts.

12. Yes. So far as it relates to physical debility of the girl and the subsequent difficulty of nursing the child.

13. No.

14. Yes. No sooner did the girl attain puberty her parents, owing to poverty and in order to preserve the girl's chastity, are very anxious to get her married. We have not experienced any difficulty under sections 375 and 376, Indian Penal Code. Puberty should be the only factor in determining the age of a girl to a certain extent.

15. Puberty is the real test for the age of consent.
16. Even in case of marriage, puberty is essentially considered.
17. In other cases, *i.e.*, without marriage whether the girl has attained puberty or not they must be punished according to the Mahomedan Law.
18. Same as 17.
19. No.
20. We are against the both.
21. Education and social intercourse will cure the evils.

**Oral Evidence of Mr. ABDUR RAUF KHAN, Secretary, Anjuman-e Zia-ul Islam, Tardeo, Bombay.**

(Bombay, 27th October 1928.)

(Vernacular.)

*Mr. Kadri:* When did your Anjuman come into existence?

*A.* In 1850.

*Q.* What is the membership?

*A.* 150. Both Shias and Sunis are members of it.

*Q.* What is the age of marriage among Mussalmans?

*A.* There is no fixed age but it is after balughat. The age of balughat is 12—13 and the age of marriage is 13—14 but it depends on the economic conditions of the parents. Richer people marry late and poor people marry early.

*Q.* We have been told that marriages take place at about 15 or 16?

*A.* No. After balugh poor people marry early.

*Q.* We have been told that Abu Hanifa has suggested that the age of balugh is 17 years.

*A.* I think it depends on the climate of the country. In India the age of balugh is between 13 and 14.

*Q.* Ulemas have said that one object of marriage is to procreate aulade saleh, *i.e.*, children of sound mind and sound body fit to serve God and His Creatures and it has been suggested that until the girls and boys are fully developed aulade saleh cannot be produced? What do you say to that?

*A.* No. My opinion is that it is due to heredity. If the parents are strong the children will be strong whereas if the parents are weak the children will be weak whatever the age of the parents.

*Q.* The medical opinion is that if consummation takes place two years after puberty the children will be strong. What do you say to that?

*A.* After puberty carnal desire is created and if the girl is not married there is a danger of immorality.

*Q.* Do you think that at the first signs of puberty these desires are created?

*A.* Yes.

*Q.* Is any age for marriage fixed by Sheriat?

*A.* No, it is balugh. If any age is fixed by law will it be interference with the Sheriat.

*Q.* There has already been an interference. The age of consent within marriage is 13 at present. What do you say to that?

*A.* People do not know the law.

*Q.* Does consummation take place before 13 among the Musalmans?

*A.* It takes place after 13 or 14.

*Q.* If the age is fixed at 14 will there be any objection?

A. We are not in favour of fixing any age by law.

*Mr. Bhargava:* You state that the age has been shortened now. What is the reason?

A. There are many reasons.

Q. Is early marriage one of the reasons?

A. Yes.

Q. You have said that among boys desires are created early. Is it on account of liberty that these desires are created?

A. Yes. Because the boys and girls mix together and it leads to sexual desires.

Q. But the women among Mohamedans observe purdah and there is no mixing?

A. No, they do not observe purdah as they used to do 50 years back. This effect is produced after 12 generally.

Q. Then there should be no education of girls after 12?

A. No.

Q. Have you seen any girl mothers of 14 among the Mohamedans?

A. I have not seen a mother between 14 and 15. So far as Hindus are concerned there are a good many girl mothers of 14 and 15.

Q. Are they stronger?

A. That depends on the healths of the parents.

Q. Do you think that the children of a couple—the boy being 20 and the girl 16 would be stronger than the children of a couple of 16 and 13? Which of these would be stronger?

A. There will be a difference according to age.

Q. According to Hindus if this age is raised there will be no objection. Your objection is that according to your idea it will be against Sheriat?

A. Yes.

Q. If it had not been against Sheriat would you prefer it?

A. Yes.

Q. According to Sheriat balugh is allowed. It is not said that marriage or consummation must take place at a certain age. If there were special injunction the interference would be more but if there is only a permissive injunction there is no objection?

A. No, it will be against the injunction of Sheriat. There is the restriction of restraining girls after puberty and there is a danger of immorality. After balugh a girl must be married.

*Moulvi Muhammad Yakub:* Have you read Arabic?

A. I have read something.

Q. How far have you read?

A. Very little. I have not read any particular book.

Q. Have you read Fikah or Hadis?

A. No.

Q. Have you got any degree?

A. No.

Q. Have you read Tafsil?

A. I have not read any Tafsil in Arabic.

Q. Can you give us any reference in Koran or any other book where it is said that consummation must take place immediately after puberty?

A. I cannot give any reference.

Q. Do you think that a girl of 13 is affected by consummation?

A. I don't think.

Q. Do you realise that the number of females that die between 15 and 20 and 20 and 30 is double the number of males and that there are very frequent cases of tuberculosis and other diseases?

A. I have been connected with schools for the last 22 years and I have not found that this disease is common. There are very few girls who suffer from that disease.

Q. What is that school? Is that meant for girls?

A. Both for girls and boys. Girls and boys sit in separate blocks.

Q. What is generally the age of the girls who are in your school?

A. Up to 10 years.

Q. You are a teacher in the school.

A. I am the Secretary of 8 such schools.

Q. If it is proved according to Sheriat that to fix the age of consummation will not be an interference with Mohammedan law then will you have any objection in fixing the age of consummation say at 14?

A. In the Sheriat both views will be found. If according to the correct interpretation it is proved, I will have no objection.

Mrs. Nchru: One of the sources of Islamic Law is the Ijtamae Ulema. If they agree to any form of legislation will you then agree?

A. No.

Q. If Turkey and Egypt have raised the age with the consent of the Ijtamae Ulema why should India not raise it?

A. There are differences of climate.

Q. If the Ulemas in India agree then you will have no objection.

A. No.

Q. According to Islamic Law acquisition of knowledge is essential.

A. Yes.

Q. If a girl is married at 12 there will be no time for her to obtain that knowledge.

A. It is enough if she understands her religion and spiritual matters.

Q. But that will also require time.

A. Yes.

Chairman: What is the restriction in Sheriat about Purda?

A. Purda has to be observed according to the Sheriat.

Q. Turkey and Egypt have abolished Purda, is that also due to climatic conditions?

A. Yes. People are more powerful.

Q. Were they not so when Purda was there?

A. I cannot say.

Q. Have you ever paid interest?

A. I have had no occasion. But Mohammedans do take interest.

Q. Is it prohibited by Sheriat?

A. It is. Mohammedans do so many things which are against Sheriat.

Written Statement of Rao Bahadur G. V. PRADHAN, B.A., LL.B.,  
District Government Pleader and Public Prosecutor, Nasik, and  
President, Widows' Remarriage Association, Nasik.

1. There is an amount of disapproval about the limit of the age of fourteen being held enough for consent when the age for marriage is rapidly increasing and as it is considered that a girl is ripe to give her consent at

14 as she does not understand the full consequences of such consent at that age.

2. The first reason is that when a girl comes in court and when she is cross-examined as to whether she gave her consent, her future is spoilt altogether, independently of the question whether consent is proved. If she is unmarried, people do not wait to see whether consent is not proved, and her marriage becomes a difficult thing.

The fitness to give consent cannot be presumed at a time when the girl has not attained her full development. In childhood, the seriousness of such action by way of consent, is never fully appreciated.

Consent of a minor to any contract is invalid. Minority in India is up to the age of 18. If all contract with minors are invalid it is difficult to understand why the consent of a minor who cannot be said to have attained even the age of discretion should absolve a person from the clutches of law.

Many more reasons can be added to what has been stated above but all of them cannot be possibly so strong as what has been stated above.

3. It is common knowledge that all offences of rape cannot be said to be brought to light. In a very large number of cases the status of the complainant's family comes in the way of making a regular complaint. It is only when the results of rape are serious, that people have to resort to a doctor and then it becomes impossible to conceal the matter any longer. In cases like these, the action of the complainant's family is construed in law as amounting to consent. Absence of a complaint up to the time the doctor reports the seriousness of the act, is often taken to mean that the complainant's family would not have thought of a complaint if the doctor had not asked them to do so. It is here that the question of consent becomes very important. In the case of a married girl it amounts to an offence under section 494, Indian Penal Code. But in the case of an unmarried girl the difficulties are serious inasmuch as consent makes a man immune from any punishment though in the society in which the complainant lives takes a very grave notice of that act.

The actual figures of cases of rape tried in a court of law will not in my opinion be any guide. In many cases it is actually found that cases of indecent assault on the modesty of a woman is the form of a complaint when actually it may be a case of rape. It often happens that in trying to conceal the shame of a girl, even the lesser charge of indecent assault fails, for consequent contradictions in evidence.

It cannot be denied that the offences of this nature are not infrequent in this District.

The only way to make the law more effective, is to absolve the complainant from all responsibility to prove that there was no consent. In other words, all sort of connection with a girl under say 16 should be punishable. This will add a good deal to improve the society at large.

4. From a variety of causes the higher classes have practically taken to marriages after the age of 15. In my own community marriage before the age of 16 has not been heard for the last few years though they were very common about twenty years ago. The lower classes however have not yet taken to late marriages, nor does it seem likely that they will take to it unless forced by law. The obvious reasons being that they cannot appreciate the cause of effect of their action, and they are more afraid of the delay in marriage than what the higher societies would do. Always the rule is that the higher society is to be induced to do a certain thing and when they have taken to it the lower society has to be forced to do that very thing inasmuch as the reasoning of the higher classes.

The law as it stands has made the consummation of a marriage under a particular age, penal but it has lost sight of the circumstance that no family is ever likely to report an offence of this nature as thereby the husband and wife are likely to be severed from each other for life.



The better course would be to prohibit marriage before a certain age and make such marriage punishable. It would have looked rather difficult for a foreign Government to undertake such legislation but now that some of the native states have taken up this legislature, and the legislature has been sufficiently reformed so as to voice the wishes of the people, such a law can as well be undertaken, now.

5. Girls of tender physis attain puberty much earlier than robust girls. There are cases in which girls have attained puberty at the age of eleven or twelve but the former age is very rare. Girls of the working class do not attain puberty up to the age of 15 or even 16.

6. As stated above, the higher classes now-a-days do not get their girls married before the age of 15 or 16. The question therefore as to whether they allow cohabitation before puberty does not arise.

Among those classes where earlier marriages are allowed cases are not uncommon when cohabitation has been allowed before puberty, but the most common rule is to allow cohabitation as soon as puberty is reached, independently of the question whether the girl is 14 or otherwise. Such cases however never come to court. During my experience of 14 years as Public Prosecutor not a single case of this nature came up before the court though I know as a matter of fact that such cases are not wanting.

7. Consummation of marriage before puberty is not due to any religious injunction. Disparity in the age of the boy and the girl has much to do in these matters. Religious rules however do say that the marriage should be consummated after puberty and if the girl is married before puberty, the relations do not wait to see that sufficient time passes after the attainment of puberty. The only course suggested by me is to prohibit marriage before sixteen. I do not anticipate that very strong opposition will have to be met in a legislation of this nature.

The Garbhadhan Ceremony used to be performed almost in every case but now-a-days the ceremony is being dropped. In higher classes the ceremony is being looked upon as undesirable.

Wherever such ceremony is performed, it is anterior to the consummation of marriage. It is usually performed even within sixteen days from the date of puberty.

9. I think that the minimum age for consummation is 16.

10. Intelligent consent cannot be expected of a girl unless she completes the age of 16 years.

11. I know of three cases in all (not in my professional capacity) in which the girl suffered on account of cohabitation when she had not attained puberty. In many cases of rape conducted by me as Public Prosecutor at Nasik the girl suffered injuries which made her go limping, with several injuries.

12. My personal experience is that a girl mother cannot take care of her child in the proper way.

13. Intelligent public opinion is distinctly in favour of higher age limit for marriage and consent. The lower classes are too slow to see the evil effects of child marriage.

I cannot say that this is due to the Act of 1925.

14. No.

15. Difficulties are many times experienced in determining the age of the girl in the absence of the age certificate. Better system of registration of births alone can give better results. In the absence of the age certificate, the certificate of the doctor is used but in many cases the certificate is not conclusive. If the age be such as would coincide with the full development of woman, the difficulty may be avoided to a very great extent.

17 and 18. As stated before, no case of marital offence has been brought before the court, nor do I think that any such case is likely unless it is an extreme case.

20. Fixing the limit of age under which a girl should not be allowed to be given in marriage is a safer remedy. Of course the offenders who disobey this mandate will have to be punished. The punishment should in the first instance be a heavy fine. In the case of an offender continuing this practice of getting his children married by breaking the law should be awarded heavier fine or in rare cases even simple imprisonment. This should of course be accompanied by legislation of penal nature fixing the age limit to the same limit.

21. As stated above, the intelligent class can be relied upon for increasing the age limit. But the lower classes can only be brought to the required level by legislation. Education and Social propaganda can do something but one will have to wait for an indefinitely long time for the same.

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**Oral Evidence of Rao Bahadur G. V. PRADHAN, B.A., LL.B., District Government Pleader and Public Prosecutor, Nasik, President, Widows' Remarriage Association, Nasik, Member, Local Advisory Committee, Seva Sadan, Nasik.**

*(Bombay, 29th October 1928.)*

*Chairman:* Are you the President of the Widows' Remarriage Association, Nasik?

A. Yes.

Q. Are you also a member of the Local Advisory Committee at Nasik?

A. Yes.

Q. How long have you been connected with these institutions?

A. I have been connected with these institutions for more than three years.

Q. Presumably you know a good deal about the Nasik District?

A. Yes. I am the resident of that place.

Q. Do you think that the law of the age of consent is known there?

A. Well: Since 1925 it is hardly known. In fact there is no publicity given.

Q. Have you reasons to believe that marriages are consummated below 13 in that part of the country?

A. Yes. In some classes they are. I mean the educated classes do not perform their marriages at any rate below 16. By educated classes I don't mean necessarily the Brahmans. The marriages take place also in the priestly class below 13. The orthodox classes prevail more there, i.e., they are in a far larger percentage than the advanced section. People between 40 and 60 per cent. marry earlier.

Q. What about the remaining 40 per cent.? Do they marry late?

A. Yes, because a considerable portion are Mahomedans and they don't get their girls married earlier. They get their girls married after 14 and in many cases after 16.

Q. So what is the population of Mahomedans in the Nasik District?

A. 1/4th or 1/5th and amongst the Mahomedans there are late marriages.

Q. Could you tell us generally the age of puberty in classes who perform the marriages at a lower age?

A. Mostly the lower classes perform their marriages earlier but the age of puberty is higher amongst them say above 13, but in the advanced classes it is between 11 and 12.

Q. You suggest that the age of consent should be raised to 16. Is that right?

A. Yes. And for extra-marital cases I have already suggested that it should be 18. But at the same time I have concluded my answer by saying that it is no use allowing people to have their marriages and then asking them not to consummate. The better course is, I would say, to stop marriages before 16. By the age of consent I mean under the Penal Code, it should be 16 and by the other social law the marriageable age should also be 16. They should go together.

Q. How long have you been at the Bar ?

A. I have been as a Public Prosecutor for 15 years and Assistant Prosecutor for 4 years.

Q. Could you remember any case in which consent was pleaded by the accused?

A. In many cases the accused has pleaded consent.

Q. Do you prefer the law penalizing marriages to the age of consent?

A. Yes. I think both should go together. Of course that will be helpful. But more age of consent in marital cases will be useless.

Q. If the law of age of consent stood by itself and there is no marriage law, would you advise any further material change?

A. If there is no marriage law, then the whole thing will be practically useless.

*Dr. Beadon* : In your answer to question 11, you say you know of three cases in which the girl suffered on account of cohabitation before puberty. Could you give us any details about these?

(Witness handed a Statement giving details of these cases).

A. All these cases belong to the Brahmin class.

Q. Might we know when the first case occurred? Was it lately or 3 years ago?

A. This happened about 15 or 16 years ago. The 2nd case happened 5 years ago and the third case happened last year.

Q. May we know what has happened in the third case?

A. The husband has launched criminal proceedings against the girl's father for illegal detention and the proceedings are pending.

Q. Are these the only three cases you know.

A. Yes.

Q. You say in your answer to question 12 that a girl mother cannot take care of her child in the proper way. May I know what are your reasons for this?

A. I am giving my own personal experience. I got a son when my wife was barely 16 and I can myself say that when the child began to cry, because she could not take care of the child, the child had to be sent to the care of a nurse. Now the mother is 35 or 36 and when I consulted her again, she agrees with me that at that time she did not know how to take care of the child.

Q. What about the birth registration, in Nasik and how is it working?

A. Of course, it is very nice but in the villages it is not good where there are cases in which birth certificates couldn't be had. There is a certain illiterate class who always live in jungles. They don't know how to report and it is only the police patil who gets information at times.

Q. Do you think it is possible to have birth registrations made in a fairly large number of these jungli people?

A. I don't think it is possible.

Q. What is the population of these hill tribes.

A. The population may be several thousands.

Q. Is there no death register?

A. Yes. There is.

Q. Are there no registrations of deaths of these people?

A. Since the village patil has compulsorily to return the death register every month, he does his utmost to record the number of deaths.

Mrs. Nehru: You say in your answer to question 8 that Garbhadan ceremony is not considered desirable amongst the enlightened people. Why is it so?

A. That is because now marriages are celebrated lately. Secondly they look upon it as a ceremony which should not be given such a publicity.

Q. Does it exist amongst those classes where marriages are performed early?

A. Yes.

Q. We are given to understand that the punishment for infringement of the law being severe, it deters the people from bringing to light many cases. Can you suggest any means to make the law more effective and also suggest any changes as regards the punishment and the proceedings so that more cases may be brought to light?

A. During the last 15 or 19 years of my Public Prosecution, I have not seen a single case reported to the Police. I don't think any good can result by any changes and alterations in the provisions of the law and it will remain only as a paper legislation unless it is concurrent with the social legislation prohibiting marriage before a particular age.

Mr. Mudaliar: Are you in favour of bringing to light all cases of infringement of the law within marital relations?

A. The question is, the relations of both the families will never disclose the fact.

Q. If you are in favour of bringing cases to light, can you devise any means so that these can be brought to light?

A. I am afraid the marriage relations between the wife and husband will be bad. Except in case of a gross injury I should say it is not possible to bring many cases to light. Unless there is a marriage law prohibiting marriages below a certain age, any new changes made in the law will be only a paper legislation.

Q. It might be a paper legislation under the existing conditions but could it not be made effective?

A. I don't think it could be made effective because the relations will not try to spoil the welfare of the wife and husband and nobody will make a complaint.

Q. But surely the consummation of marriage will be known outside the circle of relations. The neighbours may know it, in many cases later if not on the very day of consummation of marriage.

A. I would not be willing to put these matters in the hands of neighbours.

Q. That is another matter. If you want to make the law effective, there are methods by which it can be made effective. Is it not so?

A. I won't think of using any other methods.

Q. May I take it that if a marriage bill is not passed, you are not in favour of the age of consent law at all?

A. The result will be that it is useless.

Q. Can you suggest any means by which it can be made useful?

A. Unless you put people into trouble, it cannot be made useful.

Q. Don't you realise that if one of these cases is brought to light, it may protect hundreds of girls from being subjected to this cruel act? And having this in view, can you not think of any method by which this law could be made effective?

A. I cannot think of any method.

Q. If this offence is made cognizable by the police?

A. It will work very hard on the people.

Q. Supposing Reform Associations are given the power of complaint, do you think more cases will come to light?

A. But it will be extremely hard on the public to ask them to make enquiries in matters like this.

Q. Supposing an institution like yours, or Social Reform Associations or other organized bodies recognized by Government are given the authority to complain in these matters, would it do?

A. They can do a little to bring a few cases.

Q. Supposing the imprisonment is reduced to a fine in these cases except where there is actual physical injury, do you think more cases will come to light?

A. It is possible.

Q. Do you want these cases to be tried in camera?

A. Yes. It is only to exclude the public from hearing the gist of the evidence.

Q. Do you want these cases to be tried by matrimonial courts, special courts apart from criminal courts? Should "this court" be composed of officials or non-officials? Will a Stipendiary Magistrate with two non-officials do?

A. These all would be steps forward; but my personal opinion is that these steps would be quite inadequate.

Q. Would you have these cases compounded with the permission of the Court?

A. If compounding is allowed, I think then compounding should be allowed in every case.

Mr. Mitra: In your answer to question 20 you say that by mere social propaganda these objects cannot be obtained. May I know your reasons?

A. I say it will take years to obtain the objects because the social propaganda can do something but they will have to wait for an indefinitely long time. What I mean is that our social workers have reached the towns. There is a time for them to go to the villages and do social work amongst the lower classes. Whom do you mean by "lower classes"?

A. I mean the uneducated class who are less advanced in education.

Q. You say that there are marriage laws in Native States. Can you tell us if there was much agitation against the enactment of these laws so that we can draw our analogy here in British India?

A. I know only of Baroda. I cannot tell you as to whether there was an agitation previous to the enactment of the law but subsequent to the enactment of the law there was not much trouble about it.

Q. Are not the circumstances in British India and Baroda more or less the same?

A. I should say certain provinces in British India are much better than Native States.

Q. I think even if there be some agitation when the law is passed, there will be no trouble afterwards.

A. Yes. In the State of Baroda they have a law that if any marriage is to be performed before a particular time, the parties can go to Court and they are given exemption and permission, e.g., a rich man is to be married and if a particular offer goes away, it may take several years to get another suitable offer.

Q. Do you suggest fine or imprisonment for infringing the marriage law?

A. The punishment should be only fines in the beginning because we have to coach and teach the people.

Q. Supposing we cannot have a marriage law, in that case do you think that any legislation in the line of prohibiting marriages of elderly people above 45 marrying girls of 16 will do?

A. Of course qualified legislation is something but that is not all.

Q. I want to know your opinion definitely if you want any legislation in that line failing to have a marriage bill.

A. I have advocated a marriage law and if it is impossible some legislation must be enacted.

*Moulvi Mahomed Yakub* : What is the usual condition of consummation of marriage amongst the uneducated classes?

A. I have found that in the labouring classes the mother of the girl does not allow consummation before puberty. She resists it. It is not the same with the higher classes. They allow the girl to go to her husband's house at an early age. For, *e.g.*, the uneducated class in the Brahmins they have no control over the girl. They allow the girl to go to the husband's house early because the custom requires it. In the labouring class and in the agricultural class the girls are kept by the mothers themselves till they attain puberty.

Q. Are there cases of consummation of marriage before puberty in the poor caste Hindus?

A. It may be so, but I can't say definitely.

Q. You say it is generally amongst those classes.

A. I say it is generally common in the higher classes.

Q. What would be the percentage where consummation takes place before puberty in these higher classes?

A. It may be about 15 to 20 per cent.

Q. What do you mean by higher class in the uneducated class?

A. I am referring to orthodox Brahmins.

*Chairman* : I don't think the orthodox Brahmins celebrate the consummation of marriage before puberty. I think there is a great feeling against that.

A. In spite of all that those marriages are consummated before puberty.

*Moulvi Mahomed Yakub* : Don't you think that the parents are more responsible for the consummation of such marriages before puberty?

A. If the boy is old enough say 18 or above then it is more the pressure from the boy directly or indirectly which induces the parents to allow him to do what he likes when the girl is of a tender age. In that case the parents should not be held responsible. If the boy is less than 18 then the parents ought to be held liable.

Q. What is the punishment you suggest in such cases for parents?

A. As I said it is very difficult to punish these persons because very few cases would come to light but some light punishment will do. But if the punishment is severe, the law will surely be evaded.

Q. Have any cases of the breach of law within marital relations come to your notice as a Public Prosecutor?

A. Not a single case has come to my notice.

Q. You say that such cases do occur but they very rarely come to Court. What methods should be adopted to bring more cases to light. Some of the measures suggested are that we should leave the authority to Reform Associations or other public bodies. What do you suggest?

A. The Reform Associations may with great difficulty bring some cases but that would not count very much.

Q. Do you want to give the right of complaint to the Police?

A. I would make it non-cognizable. I don't think the Police should have any power. They should not meddle nor the complaints should be given to neighbours. The near relations should have the power to complain say the father or the mother of the girl and in addition to that the associations can also be given such power.

Q. Do you think that it is possible to have a social legislation in a country like India? It means that this law would remain a dead letter.

A. That is my personal opinion.

Q. Then what is the other remedy?

A. I have not thought of any other remedy except the marriage being prohibited up to a certain age.

Mr. Bhargava : Can you tell me whether it is very difficult to prove want of consent after 12 and 13?

A. When no nail marks are to be noticed, it is difficult to prove want of consent.

Q. Do you realise that if there is no mark of offence whatsoever on the person of the girl or if there is no marked injury on the person of the offender, then generally it is a case of consent.

A. Therefore I say even if it is a case of consent it ought to be punished.

Q. I want to know whether in many cases the statement of the girl that there was no consent is accepted or the circumstances attendant on the particular offence are also scrutinized.

A. All the circumstances and not the version of the girl.

Q. What is to be done in the absence of these circumstances?

A. Then in that case the Magistrate should be authorised to go into this question whether there was consent or not.

Q. In paragraph 2 you say that in the case of an unmarried girl people do not wait to see whether consent is proved or not and her future is spoilt. Do you think that any Magistrate would independently of the circumstances say that there had been consent?

A. What I say is that no Magistrate should be authorised to go into the question whether there was consent or not.

Q. That is the purpose of the consent law.

A. If you merely increase the age the difficulty would arise that all those cases cannot be tried.

Q. If the age is raised to 16, it means that consent or no consent on the part of the girl, the offender will have to be punished.

A. Yes.

Q. As regards extra-marital cases what is the punishment which Magistrates usually give?

A. Five years.

Q. Have you come across a case in which more than 5 years has been given?

A. If the offence has been held proved, the Sessions Judges are hard upon the offenders.

Q. Do you think that 5 years is sufficient punishment in such cases?

A. I should think that 5 years is sufficient punishment for others not to do it. It is sufficiently deterrent.

Q. In extra-marital relations, in cases when the girl is more than 14 and below 18 would you prefer that the maximum punishment should be 5 years instead of 10?

A. I would not mind if it is reduced to 5 years.

Q. Would you reduce it to 2 years?

A. I don't quite follow that. I think in cases when the offence is less heinous the Magistrate may use his discretion; and I do not want to have different punishments for every compartment of age.

Q. Do you think that in all cases 5 years would be sufficient?

A. Yes; it is deterrent enough.

Q. Have you come across any case in which the offence has been committed on a girl of tender age?

A. I have come across such cases. and the least age of the girl was 8.

Q. Do you think that even in such cases 5 years' imprisonment would be deterrent?

A. I think 5 years' punishment would be deterrent enough.

Q. Supposing there is a marriage law and it is broken, and you have no consent law, and there is consummation, how would you meet such cases?

A. I said that the age of marriage and the age of consummation should be concurrent.

Q. Supposing there is a consent law and it fixes the age of consent at 16, do you not think that if wide publicity is given to this law, the mere fact of its being on the Statute Book would be an effective check on law-abiding people?

A. It should be; but I am not sure it will be.

Q. Even if it is not worked in a punitive spirit, do you not think that the existence of the law itself would have some effect?

A. I am not sure it will be of great effect. The difficulties are obvious.

Q. You say that if there is no marriage law, the cases under the age of consent law would be very few. Would you not in such cases give an exemplary punishment?

A. Personally I would not have exemplary punishment in the case of the husband and wife. I do not want to spoil the girl even in cases like that.

Q. If you are so anxious about one girl, are you not spoiling the lives of thousands of girls by not awarding an exemplary punishment?

A. I do not think that a deterrent punishment would be an example to others under this law.

Q. Is it not a fact that in all such cases deterrent punishments are specially asked for by Public Prosecutors so that the punishment might serve as an example to others?

A. Yes; we do ask for deterrent punishment in certain cases, for instance breach of trust by Government servants and cases like that. But this is particularly a case in which I think deterrent punishment will ruin the life of the girl and probably will not cure others.

Q. You are for restricting the right of complaint to the girl and her parents because you do not want them to be harassed by the general public. Supposing it is made the bounden duty of every person to report, and not complain about, such cases whenever he is aware of the commission of the offence as in section 302 and other offences which come under section 44 of the Criminal Procedure Code, would you prefer that?

A. I do not think it should be made like that.

Q. It is only to bring cases to light.

A. Do you mean to say that I would report cases like that to the Commissioners?

Q. Supposing as you say the power is given to the reform associations?

A. Reform associations are different. But if I am a member of a reform association, I would not do it. If my nearest relations are involved, reporting would be dangerous.

Q. Supposing this law enjoins this duty?

A. If it were open to me I would disobey it.

Mr. Kadri : A suggestion has been made that if you have separate matrimonial courts presided over by a Judge and assisted by one or two delegates, people would be induced to bring matrimonial offences to the Court. Do you approve of the suggestion?

A. I think that would be better. It would be extremely difficult to approach the District Magistrate.

Q. We are told that birth registers are not properly kept. What is your experience?



A. In towns and cities they are properly kept. In villages also they are properly kept. But the difficulty comes in the case of the outskirts of the villages. But they are far better than they were 20 years ago.

Q. How would you remove that difficulty?

A. I think if headmen of the caste are asked to report births better results would be obtained.

Q. There has been a suggestion for the registration of marriages giving the age of the marrying parties, their names and other particulars entered in the register, so that it may help in cases of breach of the law. Do you think it will be helpful?

A. This question was raised by the Municipalities and Local Boards and most of the Municipalities and Local Boards have turned it down. My own idea is that registration should be there, but it should be optional in the beginning for the first few years and then it should be made compulsory.

Q. Who should be the registering authority?

A. In towns it may be the municipal officers. In villages it may be given to the Revenue or Police patel or Talati whoever may be literate amongst them. It should be his duty to go and see the girl and determine the age of the girl. In the beginning it should be voluntary so that people may be induced to register marriages, as in the case of the Registration Act of 1865 we had first the voluntary registration system and made it compulsory afterwards.

### Annexure to the Evidence of Rao Bahadur G. V. PRADHAN.

If marriage before a particular age is prevented by law, the first person to be prosecuted should be the person who officiates as a priest in the performance of a marriage. It should be his duty to get himself satisfied that the bride is not below the age allowed by law. This, I am sure, will stop them from allowing such marriages to be performed.

Registration of marriage is another remedy. In villages, the Police or Revenue Patel, and in towns and cities the officers appointed by the municipalities should be authorised to register marriages. He should be responsible to see that a girl below the prescribed age should not be allowed to be married. Such registration should be optional for a few years and people should be induced to register marriages. Registration should be free.

(1) Girl—married—aged 13-14, boy about 22, not attained puberty. Mother-in-law suspected she was concealing puberty. Forced in a room along with husband. Girl injured—cried out loudly, driven away out of the room by husband. Mother-in-law pushed her down the staircase refusing to allow her shelter. Girl had to seek refuge at a friend of the father whence father took her away.

(2) Girl—aged 11, married, husband about 35. Forced to cohabit before puberty, injuries resulted in limping for the last 6 years though she is now about 17.

(3) Girl about 14/15 married, boy about 28, not attained puberty. Husband forced cohabitation girl—resisted, resented, left home came and lived with father. Husband complained and launched Criminal Proceedings against father for illegal detention.

Written Statement, dated the 10th August 1928, of Dr. Y. V. BHAN-DARKAR, Secretary, Prarthana Samaj, Bombay.

1. People hardly seem to be aware of the state of the Law. When the age of consent was raised in 1925 hardly any notice of it was taken by the vernacular press. Prosecutions are rare under clause 5 of section 375 especi-

ally among the higher classes. That being so there are scarcely any means for the ordinary people to know what the Law as to the age of consent actually is.

Further there is hardly any prosecution under the exception to section 375. The general trend of public opinion is to extend the age of marriage, so that early consummation is rare; and if there be any at all, neither the wife nor the relations would like to complain.

In these circumstances people have no opportunity to form or express any opinion on the actual state of the law.

2. As the age of marriage is advancing making an advance in the proposed law would be in keeping with the advancing public opinion. As the age of marriage is advancing and young men and women come frequently in contact in these days, the age of consent should be advanced to 21 in the case of strangers.

3. The crimes of seduction of rape are not frequent in our part of the country. As to the other parts of this question see answer to question No. 1.

4. See answer to question No. 1.

5. The usual age at which girls attain puberty in our part of the country is 13 to 15. This does not differ in different castes, communities or classes of society.

6. (1) No, not in Maharashtra.

(2) Yes.

(3) Not as a rule.

No, see answer to question No. 1.

7. Not religious injunction so much as the force of custom among women.

8. The Garbhadan ceremony is usually performed. It coincides with the consummation of marriage. It is generally performed soon after the attainment of puberty.

9. This is a question for medical men to answer.

10. See answer to question No. 2.

11. Yes, the injury sustained is tuberculosis to the mother, progeny weak, ricketty and short lived.

12. Yes.

13. See answer to question No. 1.

14. Orthodox women who form a large majority of women in the country favour early consummation.

15. See answer to question No. 1.

16. After the answer to question No. 1, this question does not arise.

17. The two offences should be separated. The same punishment as at present. At the same time no importance can be attached to any new legislation as between husband and wife in the interest of their peaceful and happy relation in the future.

18. Yes the trials in marital cases should be in camera.

19. See answer to question No. 1.

20. Fixing the minimum age of marriage would be more effective and more in consonance with public opinion.

21. Would prefer to rely on progress of social reform by means of education and social propaganda. Also see answer to question No. 1.

N.B.—The above answers are given by reference to the state of things in Maharashtra.

**Oral Evidence of Dr. Y. V. BHANDARKAR, Secretary, Prarthana Samaj, Bombay.**

*(Bombay, 29th October 1928.)*

*Chairman:* Are you the Honorary Secretary of the Prarthana Samaj, Bombay?

A. Yes.

Q. Is the opinion given in the memorandum the opinion of the Samaj?

A. We appointed a small committee to draft the reply. The statement was passed by the Managing Committee of the Samaj.

Q. Do you at all like the law of the age of consent? Do you think it is of any use?

A. We can provide against unnatural things happening. We do not mind the present advance.

Q. But there is nothing in your statement about that.

A. What I say is this; there will be no opposition to the proposed legislation about the age of consent.

Q. The age of consent is proposed to be raised, according to Dr. Gour's bill, from 13 to 14 in marital cases. But there are people who say that it should be 15 or 16. What is your opinion? What age would you have for the age of consent in marital cases?

A. Our opinion is that the age of marriage should be raised. If once marriage is allowed, there is no use preventing consummation.

Q. Supposing there is no law of marriage, in that case would you or would you not have the law of the age of consent?

A. At present there is practically no necessity for the law of the age of consent. Marriages generally take place late now, and the age of marriage is generally 15 or 16. When the age of marriage is already so high I do not think there is any necessity for the age of consent.

Q. But you will admit that the age of marriage is not so high amongst the vast majority of the people in Maharashtra. Take for instance the Kunbies and the Malies. Is there not child marriage amongst them and consummation before 13? What about the vast majority of people who do marry at 13 and 14 and have child mothers at 14 or 15?

A. I do not think it is so common.

Q. What part of the country are you talking of?

A. The city of Bombay of course.

Q. We are told that among the labouring classes in Bombay marriages take place early and there are mothers at 13 and 14.

A. I cannot say anything about the labouring classes. But so far as our community goes, even the backward classes are very much advanced.

Q. That may be in a very few cases. But do you not think that amongst the backward classes marriages take place below 13?

A. I cannot say that; neither am I in a position to deny that.

Q. What about the Gujarati speaking community?

A. We are not in a position to say anything about them also. We are talking about the Marathi speaking community only.

Q. Amongst Brahmins, is it not common for girls to be married at 13 and 14?

A. It is unusual. They are becoming rarer.

Q. They may be getting rarer. But what I want to know is whether at present there is a large number of such early marriages or whether there is not?

A. I do not think there are.

Q. You say that fixing the age of marriage would be more in consonance with public opinion. What are your grounds for saying that?

A. If you penalise consummation of marriage between husband and wife that will be resented. People would not like to give out the cases of infringement, and if the parties are punished there would be much more resentment. Instead of that if you put this alternative about fixing the age of marriage before the public they would be in favour.

Q. But how do you know that both the alternatives would not be resented?

A. If the age of marriage is raised, I do not think that people would resent it. In our part of the country the age of marriage is already high and it is going on being raised. We are having elderly maids amongst us. People would not therefore object to a law of marriage. But if the marriages have taken place and you interfere with them after that, they will resent it.

Q. Are there old maids in the Pathare Prabhu community?

A. I do not know about that. But there are old maids in the Saraswat community. There are girls who have passed their M.A. examinations remaining unmarried.

Q. But that may be on prudential considerations.

A. I am trying to explain to you what are the causes that are operating to increase the age of marriage.

Q. But what is your idea about the present circumstances? Do you think that marriages are common below 13?

A. No.

Q. Is cohabitation below 13 common?

A. No. In this connection I would like to put in a memo. showing the number of unmarried girls with their caste and ages who came for confinement to the Maternity Home of the Pandharpur Orphanage conducted by the Bombay Prarthana Samaj. From that statement you will see that there were unmarried girls ranging between the ages of 15 and 21.

Q. Were these first pregnancies?

A. Yes.

Q. Do you mean to say that these are virgin girls who are unmarried and not widows?

A. These are all virgin girls.

Mr. Kanhaiya Lal: What age would you recommend as the minimum age of marriage?

A. 16 for girls and 20 for boys.

Q. Do you think that 16 would be generally acceptable to the Hindu community?

A. Yes, it will be acceptable in my part of the country. There is no agitation against the Sarda Bill in the Maharashtra.

Q. But Sarda's Bill proposes only 14 for girls.

A. But people are ready for 16.

Q. Do you not think that there is a danger of the boys and girls going wrong if you fix such a high age?

A. Considering the benefit that would result from a raising of the age, I think you are making too much of the danger.

Q. What about the boys? Do you not think that they might be led into temptation and go to places of ill repute?

A. I do not think so. I think the boys will themselves refuse matrimony till the age of 20.

Q. What would you fix as the age of consent in marital relations?

A. I do not want that after marriage one should interfere in marital relations.

Q. Supposing there is no marriage law; supposing the attempted legislation fails, in that case would you have a law for the age of consent?

A. Then I would have 16 for consummation.

Q. Do you realise that in case there is a law for marriage and no law for consummation, people might defy the law of marriage and celebrate marriages and pay the penalty. In such cases would you not have a law for consent so that breaches of the law of marriage might be covered at the time of consummation?

A. We do not want a sentence of fine only in the age of marriage law. We want imprisonment also both of the parents and of the boy.

Q. Supposing the age of marriage is fixed at 14, would you like that the age of consent should be fixed at 16 so that there might not be any breaches of the marriage law?

A. I think that the legislation about the age of consent would not be effective.

Q. Supposing the Legislature decides to fix an age of consent for marital cases, can you suggest any measures for making the law effective and bringing cases of infringement of the law to light?

A. Unless the parties themselves want to complain, I do not want any interference in the marital relations. I would confine the right of complaint to the girl or her parents.

Q. Would you not give the right to social reform organisations?

A. I do not want any outside interference.

Q. Would you like the right of complaint to be given to caste panchayats?

A. If a large majority of cases occur there might be some external interference. But the cases that occur are so rare that I do not want any interference.

Q. Would you give the power to vigilance associations?

A. I do not want vigilance societies at all.

Q. Would you make the cases non-cognisable by the police?

A. Yes.

Q. Supposing the girl receives severe injuries from a husband who is about 40 years old and the girl dies, would you even in such cases have the cases non-cognisable?

A. We are providing a general law; and hard cases should not be the reason for a bad law. If these hard cases were to happen always I would certainly agree with you.

Q. But would you not have a law providing for all sorts of cases?

A. But the cases of old men marrying young girls are very rare.

Q. But we have to provide for such cases also.

A. I submit that if you bring extreme cases under the general law that would be a bad law.

Q. Would you make any differentiation in the punishment or leave it to the discretion of the magistrate to award it according to the nature of the case?

A. I am reluctant because in marital cases I think that there should not be any external interference.

Q. You have suggested that the right of complaint should be given to the girl or her parents. But generally the girl or her parents would not be willing to complain. In such cases what measures would you suggest for bringing cases of infringement of the law to light?

A. I think that in such cases it is better that there is no interference at all. We have only very few cases like that.

Q. We had one case like that in the Bombay High Court in 1928.

A. But these cases are very rare.

Q. Supposing there is only one case of theft or only one case of murder, would you say that there should be no law?

A. But cases of marital relations are different. In such cases I would rather prefer that the offender goes unpunished rather than that there should be any interference in the marital relations.

Q. But even now there is a law making such offences punishable.

A. But the law is now practically a dead letter.

Q. Do you mean to say that the number of cases of breach are much larger than the number of cases which actually come to light?

A. I mean that such cases are of very rare occurrence.

Q. Supposing we require that all marital cases should be investigated by gazetted officers of the police, would you then agree to have a law?

A. That would not remove my objection. But if there is to be any interference at all, I would welcome it because I do not like investigations to be made by lower officers of the police. I think the present section 561 of the Cr. Procedure Code would do.

Q. Would you recommend that in marital cases, there should be a preliminary enquiry as in section 202 Cr. Procedure Code before any notice or warrant is issued?

A. Yes; and the trial should be in camera, if it takes place.

Q. Is it necessary to make the preliminary enquiry compulsory?

A. If the District Magistrate and the Police Inspector are there then I do not think that the preliminary enquiry is necessary. But these things should be in camera, and the legal proceedings should also be in camera.

Q. Would you recommend that there should be a system of registration of marriages so that we may find out the ages of the marrying parties?

A. I would not recommend it.

Q. What is your objection?

A. I don't find any necessity for it.

Q. Is it not necessary to enquire when marriages take place or at the time of the consummation of the marriage whether the law has been broken or not? How can you find it out if there is no report about the marriage?

A. Marriages are much advertised and everybody knows about it. We have never heard about secret marriages except in the case of marriages which are conducted under the Civil Marriages Act.

Q. But who would know what the ages of the marrying parties are?

A. The neighbours would know it. In Bombay there is registration of births and you can know the marriage age of the parties.

Q. But in that case would you not have to go through the records of a number of years at different places, unless the birth place is definitely known?

A. No; you will have to go through the records for some four or five years, because you can approximately know the age of the parties and then look into the registers.

Q. But would it not simplify matters if a register of marriages is available?

A. If the Government want to have a record of the marriages let them record them. But I do not like that the parties should be asked to report their marriages. The Government can record the marriages easily because everybody will know them.

Q. Would you not place the obligation of reporting on somebody?

A. No.

Q. In order to restore good feeling between the husband and the wife in the case of marital offences, would you not be in favour of the cases being made compoundable?

A. If you are going to make the offences compoundable why bring them to court at all?

Q. Would you make such cases compoundable with the sanction of the court?

A. I would not make them compoundable with the sanction of the court; but if both parties agree they can be compounded amongst themselves.

Q. Supposing the girl is less than 12 years, who would compound?

A. The parents or guardians of the girl.

Q. Supposing there are no parents or guardians, would you allow the Court to grant leave for such compounding?

A. There are even now some cases in the Cr. Procedure Code, which may be compounded without the sanction of the Court and some which can be compounded with the sanction of the Court. This case I would make compoundable without the sanction of the Court.

Q. Do you think it would be desirable to entrust these marital cases to matrimonial courts consisting of a magistrate and two non-officials, instead of the regular courts?

A. Yes; I would welcome matrimonial courts.

Q. Do you think they will inspire greater public confidence?

A. In cases like this there should be less of rigour and less of interference. I would prefer these matrimonial courts because they will work with less rigour.

Q. Would you have a mixed court?

A. I would associate one or two non-officials with an official.

Q. Irrespective of the age would you make all matrimonial cases come to this Court? Now cases under 12 go to the Sessions Court and above 12 go to the Magistrate.

A. If marriages are taking place as they are taking place at present, I would not like cases of this kind to go to a court of Sessions.

Mr. Kadri: You say that the age of marriage is generally rising. Do you think that people are beginning to realise the evil effects of early marriage.

A. I do not say that. I say there are causes which are operating to raise the age of marriage.

Q. What are the causes?

A. Before 1891 there was a belief amongst people that they must marry their girls before they attained puberty. That belief remained till the end of the last century. Now people generally marry their girls after puberty. There is the dowry system. There are other economic causes. Young men do not like to marry till they are settled in life. Then there is female education. Every girl goes to school. We have compulsory secondary education and even the backward class girls go to school. Amongst the higher classes sometimes their girls go to college. Therefore the original belief which led people to get their girls married early has died away altogether.

Q. And what are the economic causes?

A. Formerly there was the joint family system and the members of the family were supported by their parents. But now every individual is responsible for his own wife and children and he has to maintain them. Therefore unless he is able to maintain a family he does not think of marrying.

Q. Do you think that these causes have led to the age of marriage being raised?

A. Yes.

Q. If so do you think that there is any necessity for fixing the age of marriage?

A. The people of the Maharashtra never wanted any legislation, neither did they protest against it. Therefore we have said at the end of our statement that we would leave it to social propaganda and education.

Q. So far as the law of the age of consent within the marital state is concerned, you are aware that it has been on the Statute Book for a very long time and it has been administered without interference in the marital relations.

A. That is because no cases have come to court.

Q. But even now we are having two or three cases of serious injuries every year, but still the law has been so carefully administered that there is no complaint or resentment.

A. There has been no interference because cases have been rare.

Q. If the present procedure has led to no interference would you retain the present law?

A. I am indifferent to it, but I am not against it. The law may remain as it is.

Q. It is necessary in order to protect child wives in certain cases. Because of the existence of the present law on the Statute Book we find that people are cautious in dealing with girls. The fear is still there though cases may not come to court. What do you say to this?

A. Now-a-days people have come to realise that girls should not be married before a certain age. I am talking of my community only.

Q. In the case of other communities do you think that legislation of that kind is necessary?

A. Yes; in the case of other people amongst whom this evil exists legislation might be necessary.

Q. In that case would you have the age of consent at 14?

A. My difficulty is whether there is the evil. If the evil is there there must be the remedy.

Q. In that case would you raise the age of consent beyond 14, say to 16 also, with the existing procedure and safeguards?

A. Yes; then I would say it should be raised to 16.

Mr. Bhargava: You say that the age of consent in extra-marital cases should be raised to 21. But at the same time you have given us figures to show that girls of advanced ages have gone wrong.

A. Therefore I want to protect them.

Q. Does that not show that at that age the girl attains full powers to understand the nature of the act?

A. I would like that things should not be left to the discretion of the girl till she is able to realise the consequences.

Q. Do you think that if you raise the age to 25 or higher still, the law would work well? Would it be effective in protecting girls?

A. If the law officers are vigilant they will protect such cases.

Q. Do you want then the age to be indefinite?

A. I think that after 21 a girl can very well think for herself.

Q. Take it from the point of view of those who enter into a sort of alliance with the girl. Would they not believe that the girl is fully aged to realise the consequences?

A. In that case they take a risk.

Q. Supposing the age is fixed at 21, would there not be greater immorality?

A. No; on the other hand I think it will prevent it.

Q. Would you have some punishment for the girls also in case you fix the age of consent so high?

A. No; absolutely none.



Q. Do you know of any other country in the world in which the age is so high?

A. I do not know.

Q. Which evil you think is greater—so far as married girls are concerned or unmarried girls are concerned?

A. This evil so far as this country is concerned does not exist to a large extent. Even extra-marital cases are rare.

Q. Then in your opinion there is no need for enacting this law?

A. My opinion is to raise the age of marriage.

Q. Do you think that in extra-marital cases the trial should be in camera?

A. No.

Q. But the scandal is all the greater!

A. No, the man deserves to be exposed.

Q. If it is proved that in a marital relation a husband had intercourse with his own wife, is the scandal greater there?

A. I am looking from the point of view of ultimate reconciliation.

Q. Would you like a system of compounding in extra-marital cases? Supposing there is connection between the boy and the girl and after connection they are prepared to marry, would you allow it?

A. I would say let them be married.

Q. You say that you are not in favour of giving the right of complaint to anybody except the girl or her parents. Supposing there is a system of sanctions provided that no case should be brought in court excepting with the sanction of some prescribed authority—say the district magistrate?

A. I do not want that interference. If the girl or her parents do not want to go on none of the officers should intervene.

Q. You proceed on the assumption that there are no cases. Presuming that this evil in the rest of India is very great and you want to provide some law against it. Would you like that there should be some system of sanction before any case is brought to court?

A. I say every case ought to come to court.

Q. Would you like everybody to complain?

A. Yes.

*Maulvi Mohd. Yakub*: Is there any age for marriage fixed by the Shastras?

A. It is said to be 8 in Shastras but it is a dead letter. The impression among the people is that marriage should be before puberty.

Q. Do you want a law fixing the age of marriage?

A. Yes.

Q. What age would you fix?

A. I would fix 16 for girls and 20 for boys.

Q. Don't you think that a law on this point will create a great heart-burning among the Hindus who follow the Shastras?

A. People do not follow Shastras—they are so advanced.

Q. You think that the Hindus do not care for Shastras and they do not follow their religious sanction?

A. So far as marriage is concerned Hindus do not care for the Shastras.

Q. If the legislature fixes an age which is in contravention of the Shastras, don't you think the Hindu Society will consider it as an interference?

A. Not in my part of the country.

Q. If you postpone the marriages of boys to 20 in a hot country like India where boys also attain puberty at an early age, don't you think you will be increasing the chances of immorality among the boys?

A. To a very little extent. The social opinion, family traditions and education have a great force.

Q. What is your experience about the present condition of the boys—if they are not married up to the age of 20 or 21 are they sometimes led astray?

A. Such cases are very few; they are rare.

Q. Do you think that the law of age of consent is a dead letter?

A. Yes, because there is practically no infringement.

Q. As the law stands at present would you like to keep it on the statute book or would you like to have it removed?

A. I have no objection to its remaining on the statute book.

Q. Is it or is it not a dead letter as it stands at present?

A. Yes it is a dead letter because there is no infringement.

Q. And therefore why do you like to keep such an obnoxious law on the statute book?

A. If my experience can be applicable to the whole of India, it need not be there.

Q. Do you think that there is a difference in the health, weight and general constitution of children born to a mother of advanced age and children born to a mother of 14 or 15 years?

A. Yes. I think the progeny of girl mothers is weaker and ricketty.

Q. Therefore you would not like that consummation should take place at 13.

A. My position is that marriageable age should be 16; so consummation will naturally be later. If there is early marriage, it is impossible to prevent consummation.

Q. Don't you know that there are certain communities among whom marriages take place once in 12 years?

A. That may be among some community in Gujrat but I am not speaking for that community.

Q. But the law will have to be made for all the communities considering the state of affairs throughout the whole of India?

A. I am speaking for my own community. If the evidence before your Committee is against that then the law should be as strict as possible.

Q. Would you like that there should be a law of age of consent for other communities and your community may be exempted from its operation?

A. I will have no objection to its applying to our community also. If people are married early I would say the age of consent should be 16.

Mrs. Nehru: Is infant mortality very high here?

A. Yes.

Q. What per cent?

A. I could not give you details.

Q. You are in favour of raising the age of consent even if it is not possible to fix a marriageable age?

A. If it is not possible to fix the marriage age then the age of consent should be 16.

Dr. Beadon: In reply to question No. 11 you say that girls get tuberculosis after 2 or three children. Why do you say that they marry young?

A. Because those cases which I have mentioned are the progeny of young mothers. I remember a girl who had 2 or 3 children when she was 16.

**Annexure to the Evidence of the Secretary, Prarthana Samaj,  
Bombay, dated the 29th October 1928.**

*Unmarried girls who came to the Maternity Home of the Pandharpur  
Orphanage.*

Year.	Caste.	Age.
1923-24	Sonar, 1 . . . . .	19
1924-25	Brahmins, 2 . . . . .	16, 17
	Gujrati Bania, 1 . . . . .	18
<hr/>		
4		
1925-26	Maratha, 1 . . . . .	16
	Gujrati Bania, 1 . . . . .	16
	Brahmin, 1 . . . . .	15
	Kayastha Prabhu, 2 . . . . .	17, 17
<hr/>		
5		
1926-27	Brahmin, 2 . . . . .	20, 16
	Kayastha Prabhu, 2 . . . . .	16, 18
	Madiasi Khatrri, 1 . . . . .	17
<hr/>		
5		
1927-28	Kayastha Prabhu, 2 . . . . .	18, 17
	Brahmin, 2 . . . . .	18, 17
	Saraswat Brahmin, 2 . . . . .	18, 15
	Maratha, 2 . . . . .	20, 21
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8		

**Written Statement, dated the 18th August 1928, of Mr. R. P. MASANI, Vice-President, Vigilance Society, Bombay (submitted in his personal capacity).**

1. There has been for a long time past much dissatisfaction with the state of the law on the subject. As Joint Honorary Secretary of the Society for the Protection of Children in Western India, as a member of the Committee of the Children's Aid Society and as Vice-President of the Bombay Vigilance Association, I have had many opportunities of ascertaining the public sentiment on the subject, and I believe I am correct in stating that while the more advanced section of social reformers wants to fix the Age of Consent as high as even 21, the moderates amongst the reformers and the general intelligent public are of opinion that the age limit prescribed by the Sections should be at least 16.

2. There is absolutely no justification for retaining the law as it is. It does not at all redress a grievous social wrong. On the other hand, it condones serious offences against girls who can only be regarded as children. No Government that calls itself enlightened can have any excuse for delaying an advance on the existing state of the law. There can be no question that sexual intercourse at an immature age ruins the race and that the present high rate of infant mortality, and the low vitality of the people are due mainly to early consummation of marriage. The question of raising the age

of consent has, therefore, a vital bearing on some of the most fundamental conditions of national life.

3. I cannot say that cases of seduction are frequent in Bombay, but I think, from my experience, I can safely say that they are not uncommon. I do not think the recent amendment of the law raising the age of consent to 14 years has made any appreciable difference. To make the law effective, the age limit should be materially increased. It should be at least 18 outside the marital state. Under that age no girl should be considered sufficiently intelligent to give her consent. Moreover, the higher the age limit, the greater the chances of protecting girls of immature age. For example, if the age limit was 18 and if the girl offended against was only 14 or 15, the offender cannot set up the plea that he had reasonable cause to believe that the girl was of or above the age of 18.

4. I am not aware that the amendment of 1925 has been effective in any of the directions suggested. The more intelligent classes of people including even the uneducated women in the family do not regard 13 as the proper age for the consummation of marriage. They generally put it off beyond the age of 14, but to make the law effective as regards the masses, the age limit should be enhanced. Even then it will not act as an effective deterrent. The proper remedy is to prohibit child marriages.

5. The age at which girls attain puberty differs in different communities and classes of society. The usual age is probably 14, although among the lower classes girls appear to attain puberty earlier. But the mere appearance of puberty is one thing and the actual attainment of physical development sufficient to take to married life and to endure the travails of motherhood is another.

6. I am not aware of cases of cohabitation before puberty, but there is no doubt that it commences soon after puberty although hardly any such case comes to Court.

7. I cannot claim any knowledge of the Shastras, but from what I have read and personally heard from persons competent to throw light on the subject, I gather that the practice of early consummation of marriage cannot be attributed to religious injunction. So far as my information goes, no Shastric law enjoins early marriage or pre-puberty consummation; on the other hand, if the Vedic law is strictly followed, consummation should not take place before a girl has completed her sixteenth year.

9. Certainly not. I have already stated that the mere appearance of puberty should not be confounded with the actual attainment of womanhood. In my opinion a girl's physical development should not be considered sufficient to justify consummation of marriage without injury to her own health and that of her progeny, until at least five years after the mere attainment of puberty—that is to say, not before she is 18. However, as this will appear to many to be an extreme view, I should be content if the age limit for the purpose is fixed at 16.

10. Not until she has attained the age of 18. Outside wedlock I should insist on the age limit being fixed at not less than 18 and would prefer to raise it to 21.

11 and 12. I have come across several cases of girls ruined by cohabitation at a tender age. One of the most distressing cases was that of a girl scarcely ten years old who had been wronged and who was suffering from venereal disease when she was sent by the Police to the Home of the Society for the Protection of Children in Western India. Apart from such stray cases which came to my knowledge in connection with the work of the Children's Society, as a Municipal Officer I heard annually the Head Officer's tragic tale of the disastrous effects of child marriages on mothers and their children. The evidence of returns of infant mortality all over the country and of the high mortality amongst women and of the prevalence of consumption and other diseases amongst them, is conclusive on this subject.

13. Yes, there has been a progressive change in public opinion on this subject. It is more marked amongst the educated classes, but from informa-

tion I have obtained I should say that the development of public opinion is general.

14. I cannot claim personal knowledge on the subject, but from inquiries I find that uneducated women, particularly amongst the lower classes, generally favour early consummation of marriage. However, even amongst them there has been a change of feeling and they are not now in a hurry to send girls to their husbands' houses, as they were before.

15. There are difficulties, but about these I am not competent to speak. I may, however, suggest that as regards married girls there should be a provision that the plea that the husband had reasonable cause to believe that a girl was of or above the prescribed age shall not be a defence to a charge under the Act.

16. It will not be materially reduced if the age of consent is raised to 14 years or above, but will no doubt be somewhat reduced, and the greater the age limit, the less will be the difficulty or margin of error.

17. Yes. I would suggest that in the initial stages of the proposed reform, punishment in the case of marital offences should be much lighter than that prescribed for extra-marital offences. For the latter I suggest that the punishment prescribed in Section 376 be adhered to, for the former the maximum term of imprisonment may be reduced to six months.

18. For offences within the marital state magisterial inquiry should suffice.

20. Penal legislation 'fixing a higher age' of consent for marital cases cannot be more effective than legislation fixing the minimum age of marriage. In fact, having regard to the state of society in this country, I should be averse to any penal legislation for offences of this description within the marital state, the only proper remedy being, in my opinion, legislation preventing child marriages. That, I feel certain, would be in consonance with public opinion.

21. Both. I have often had to complain during the last 15 years both in the press and on the public platform that Government have been very backward in regard to social legislation of this kind. In my opinion, it is against all principles of good Government to put off the necessary legislation on the ground that Government cannot move in advance of public opinion. The articulate public opinion is overwhelmingly in favour of the reform. As regards the inarticulate, illiterate masses, already a grievous wrong has been inflicted on them by suffering them to remain illiterate and if they appear to be unconcerned, Government should not do further harm to them by refusing to listen to the opinion of those who are qualified to speak on their behalf.

## Oral Evidence of Mr. MASANI and Miss I. N. DICKINSON, Vigilance Society, Bombay.

(Bombay, 29th October 1928.)

Mr. Masani said that he wanted to appear before the Committee with Miss I. N. Dickinson so as to help the Committee. The written statement of the Vigilance Society and Mr. Masani is the same.

*Chairman:* Is there any real difference?

A. There is no material difference except that I have gone a little further. It is not a difference of opinion but I am emphatic in my view about Government delaying this legislation. My personal view is that the age should be higher but following other people I would say, for all practical purposes, it should be 16 and 18. I have answered a few more questions into which the Association has not gone.

Q. You do not seem to have very much faith in the age of consent being raised.

A. I personally think that very important measure is the marriage legislation. That would solve many practical difficulties.

Q. There is this difficulty that it is quite possible that the law penalising marriages may not be accepted by the legislature?

A. Therefore I say we are for both but it would not have that effect as the other measure.

Q. Have you any reason to believe that in many cases here in Bombay there is early consummation of marriage before 13, 14 or 15?

A. According to the information I have had there are many cases of that kind.

Q. Are there cases below 13?

A. Yes.

Q. Among what classes?

A. Among Gujratis. Now I understand generally the family have sufficient intelligence not to send girls to their husbands' house before 13.

Q. You have reason to think that in many cases, at any rate, in Bombay the law of 13 is broken?

A. I understand so although I have no personal knowledge.

Q. Why generally do not cases come to light?

A. The aggrieved party is the girl or her parents and they would not come. They take it as a matter of course that when the girl is married she goes to her husband's house.

Q. But it is open to everybody to go and complain?

A. I should be surprised if even 10 per cent. of the population know that there is such a law.

Q. You have suggested 16 in marital and 18 in non-marital cases.

A. I think it should be 21 in the case of non-marital cases but 18 should be the minimum. It should also be the same for marriage.

Mrs. Beadon: In answer to question 11 you have stated the evil effects of child marriages. Can you give us one or two examples of the evil effects?

A. I have not brought particulars because I thought that the health officer had already given the figures and said that the evils were due to child marriages.

Q. In answer to question No. 11 you mention of a girl of 11 where the injury was V.D. Was that an extra-marital case?

A. That was an extra-marital case. I have since heard that the girl was even younger. She was 10. In these extra-marital cases there is no justification at all. One other case came to our notice. The girl is at present a prostitute. She was married at 5 and consummation took place when the girl was 7 years. She was very badly injured.

Q. What class was she?

A. She was a Mahar.

Q. What is the age of the husband?

A. About 20. This is really an extreme case.

Q. What age is the girl now?

A. She is now 17.

Q. When did she come to your Home?

A. 9 months ago.

Q. Have you met any other case?

A. Recently I met a case of rape upon a young Christian girl.

Q. Can you suggest anything to bring these cases to light? The age of 7 or 9 is much below the age fixed by the law. The man should have been punished with transportation for life or 10 years' imprisonment. Was any punishment given in this case?

A. The case did not happen in Bombay. It was in a country district. The man was not punished at all. These cases never come to light. I know of several other cases also.

Q. Can you give us those cases also?

A. There was a Maung girl who was married at 3 and the marriage was consummated at 10. She is now 20. The other case was of a Kunbi girl who was married at 8 and the consummation took place at 10 and she is now 16.

Q. Who gave you these ages? We recently visited the Children's Rescue Home and we found that the girls could not tell us their ages. They were very shy.

A. Yes, that is true. I think these ages are roughly right. These are the approximate ages. There was another extra-marital case where the girl was married when she was 9. She became a prostitute when she was nearly 12. She was a Pathan girl. This case went to court. We found out and the police took action.

Q. Can you visit brothels?

A. We have fairly free access to brothels.

Q. By law?

A. Not by law but by grace.

Q. Can you tell us the ages at which seduction has generally taken place in your first 5 years' experience?

A. My experience is chiefly among the Christian girls. I have had 39 cases of seduction under 16 years of age. 9 of them were under 14 and 27 of them were mothers at 16.

Q. Have you reason to believe that they were compelled seductions?

A. I don't think there was absolute compulsion.

Q. What are the reasons of seduction?

A. 8 were prompted by relations, in other 10 cases the employer was the seducer and in four cases they came in contact with the procurist.

Q. They are all Christian cases?

A. 2 were Europeans, 1 Jew, 3 Anglo-Indians and the remainder were Goanese and Mangaloreans. After that first experience I worked among the prostitutes. I have not met very many cases there. They go to the Children's Aid Society. I have known 19 cases under 16. 6 of these were caste girls, 11 belonged to the depressed classes, and 2 were Mohammedans.

Q. Were they widows?

A. 3 were sent by the husbands and others were widows.

Q. What do you do with these girls?

A. We keep them in the Home and their future is a matter of great perplexity to us. We have sent out a few of them as domestic servants. They are always affected by some sort of disease. They suffer from T.B. often. It is very difficult therefore to deal with them.

Q. You have rescued them from bad life for the time being.

A. And we hope permanently.

Q. Have you any experience beyond your Home? Do you know the general condition of things among labouring or other women here?

A. It is mere hearsay. I know about Christians.

Q. Among them the girls are apparently married almost on the attainment of puberty.

A. Among these Goanese marriages take place early at about 13 or 14. Motherhood is common between 15 and 16.

Q. Who are these Goanese Christians?

A. They are the Portuguese Indian converts which the Portuguese made in this part of India. They have received the benefit of Christianity further.

Q. What is the effect of this early motherhood on their children?

A. The effect is bad. They certainly don't have healthy children.

Q. Do they belong to poor classes?

A. They are more working classes. Those who are educated do not marry so young. The uneducated marry young. There is a section that does marry young and both they and their progeny suffer.

Q. You refer to a case of the most distressing type in answer to question No. 11. What was the caste of the girl?

A. Babi Marhatta Hindu. The girl was sold for Rs. 6. (Here Mr. Masani gave the following cases. The above-mentioned seduction cases were given by Miss Dickinson). These cases occurred between 1918 and 1920. One or two were brought to us from brothels where the agents of the Society work. I have met 7 cases between these two years. One or two cases were of married girls also. The girl was very much tyrannized by the husband and his mother. One girl was of 10, one was of 11, two of 13 and 2 of 14. If the age is raised to 18 many girls will be protected between 14 and 18.

Mrs. Nehru: How many years has your society been working?

A. 12 years.

Q. How many children do you get on the average every year.

A. On the average we get about 200 children.

Q. Have you made any arrangements for training them in any profession.

A. We have got carpentry classes. We give them literary education also.

Q. What do you do with the girls?

A. We get some of them married if we can secure husbands. In three or four cases we have married the girls.

Q. Have you noticed any change in the number of seduction cases since the amendment of 1925?

A. I have not got any record. I have not come across many such cases. It is partly because we don't look to them as we used to. There is a society for this purpose under the Bombay Prostitution Act. We reclaim only rape cases. I think there is some difference in the seduction of elderly girls.

Q. You say cases of the breaches of the law hardly come to court. What is the reason for that? Why is there such paucity of people who should come and report?

A. Nobody makes a complaint. Neither the girl does it nor her parents do it. They all try to keep it a secret. Even in extra-marital cases very few cases are brought to our homes, others go undetected.

Q. Even if the girls themselves and their parents do not complain why do not the relations, friends and the neighbours complain?

A. That idea has not developed among our people. During the last 12 years there have been some cases which have come to the knowledge of the Association, but no cases are reported.

Q. Has your association made any efforts to bring such cases to light?

A. Our agents go round, we get some information. But against one detected there must be another hundred not detected. These girls are sent to us by the police.

Q. I want to know whether your association sends those cases to the police which have not already gone into their hands.

A. It is very difficult to prove such cases.

Q. In answer to question No. 6 you say there are cases where consummation takes place before the girl completes 13 years. Amongst which class it happens like that?

A. Among the lower classes these cases are common. Amongst the Gujaratis also consummation takes place soon.

Q. By lower classes do you mean, factory girls?



A. Yes.

Q. Are there any other communities also where consummation takes place below 13?

A. Might be taking place among the Mohammedans. I don't think there are any other communities where consummation takes place below 13.

Mr. Mitra: Have you made some references to Vedic texts?

A. I have not expressed any opinion about that.

Moulvi Muhammad Yakub: What is the object of this society?

A. We are out to fight social evils.

Q. How do you get the children? Under what law do you get them?

A. We take cases of seduction if we can get them by the help of the police, and we keep the girls in our Rescue Home.

Q. Under what authority do you get them?

A. The police have got authority to send them to the Rescue Home under the Bombay Prostitution Act.

Q. But how do you know that these girls are meant for prostitution?

A. Because we find them in brothels.

Q. How long do you keep them in the House?

A. As long as they will stay. We try to keep them as long as we can.

Q. How do you provide for them? Do you marry them?

A. We get girls who are above 16. They are looked after here and if possible we get them married and if it is not possible to marry them they remain with us and do some domestic work.

Q. If their parents want to reclaim them?

A. It is our main object. If the parents want them we give the girls to them. We carry on correspondence in all parts of India and try to find out where the parents are.

Q. To Miss Dickinson: What is the difference between your society and his society?

A. We don't take girls under 16.. . .

Q. But under what law can you take a girl against her will?

A. Under the Bombay Prostitution Act nobody is allowed to bring a woman of any age in Bombay for the purpose of prostitution. If the police find that a new girl has been brought they institute prosecution. They make enquiries. During the course of the enquiry and till the prosecution the girl or the woman is kept with us for safe custody if they are willing to remain with us. We either keep them or hand them over to the parents.

Q. But when they remain in the Home do you get them married?

A. We shall endeavour to marry them. But at present their state of health militates against this idea. They all suffer from venereal disease. We have married about 3 girls.

Q. To Miss Dickinson: Do you find that the girls are satisfied with their life in the brothels? Do they want to go back to brothels after they leave your Home?

A. I think 1/4th would be contented with brothel life and others would like to keep out of it.

Q. How long can you keep the girls?

A. It all depends upon the girl. If she is of age she is free to do as she likes. We cannot control. She can go anywhere she likes. Till the enquiry is complete she has to be with us.

Q. Mr. Bhargava: Do the police take any bonds from the society?

A. No.

Q. Supposing the girl goes away will the society be responsible? She has to give evidence.

A. It has not happened very often. Three girls have up till now absconded from the Children's Home. It does happen that the boys run away. The police sends these children to our Home because there is no home for them. I don't want my house to be a prison house. They are free to go if they want to. It is a recognised society.

Q. How can the police give those boys and girls to you without taking some sort of assurance or guarantee that they won't run away?

A. There are certified schools where the children can be seen. After the trial the magistrate can send the children to the Vigilance Society's Home.

Q. Do the Government give any aid?

A. 9 rupees per child.

Q. As regards these girls who have been married, to whom have they been married?

A. One was married to a slightly higher caste, one to a Christian and the other to a Mohammedan.

Mr. Kanhaiya Lal : What is your idea about marital cases? Would you make them cognizable by the police or would you leave them to be taken up only on the complaint of the girl or her parents?

A. The cases may be made cognizable.

Q. Irrespective of age?

A. Yes. I would like that these cases be tried by the Juvenile Court or the Court of Domestic Relations as is the case in America.

Q. Do you recommend that these courts should be purely non-official or there may be a stipendiary magistrate aided by one or two non-officials?

A. I think there could be one or two non-officials with the magistrate.

Q. Do you think that that will inspire greater confidence?

A. It will be a much better machinery.

Q. So far as Juvenile court is concerned, the person offended against may be a minor.

A. I would rather have the trial in the Juvenile Court.

Q. You may have a matrimonial court consisting of as you have said, a stipendiary magistrate and one or two non-officials.

A. Yes.

Q. Would you be in favour of registration of marriages that is, reports of all marriages being made to a prescribed authority giving the ages of the marrying parties, so that any public association like the Vigilance Association may be able to find out whether the law has been infringed?

A. Certainly. There should be registration both for births and marriages.

Q. Would you like that in both cases, a free birth certificate in the case of birth registration and a free marriage certificate in the case of marriage registration, should be issued free of charge to the reporting individual?

A. Yes. A nominal fee may be charged.

Q. Do you think that will be helpful?

A. That should certainly be.

Q. Would you recommend that in the case of marital offences compounding should be allowed in order to restore good relations between the husband and the wife?

A. I have said in my statement that I am averse to any penal legislation in the case of marital offences. If at all, it is necessary, the girl may be separated from the husband for some time. That would be far better than sending the husband to jail. Compounding might be allowed with the sanction of the court wherever feasible.

Q. There is a complaint that these cases are not brought to light. Will an association like your Vigilance Association help in bringing these cases to light?

A. My Association would be delighted to do whatever it can. It will be ready to co-operate with the Government in the enforcement of the law.

Q. Can you make any other suggestion for making the law effective and bringing infringements to light?

A. I don't see that there will be much improvement by raising the age of consent. The proper remedy would be to raise the age of marriage. That would also solve many administrative difficulties of the kind you refer to.

Q. Until then what would you suggest?

A. I think the best course would be to give effect to such a law would be to have voluntary organizations ready to co-operate with the police authorities or other authority charged with the operation of the Act.

Q. How would you appoint them in rural areas?

A. In the rural areas also, panchayats or councils whatever can be formed should be formed.

Q. Would you constitute any special panchayats?

A. There may be representatives from all communities, elderly representative people from all communities.

Q. Should they be of a voluntary character or should they be nominated by the Executive or some other authority?

A. They should be voluntary. You can't have always officials.

Q. Would you like that there should be some nominees of the district board or the local board or the executive on these bodies?

A. I do not rely on the co-operation of councillors and others. They are more for platform show than any real social work. If the work is to be done in an unselfish and unobtrusive fashion there should be a small body of the representatives of all communities.

Q. If you have the age of marriage fixed at 14 would you still have a law fixing the age of consent?

A. There should not be any consummation at less than 16. I should be very much disappointed if the age is fixed at 14. We want that it should at least be 16.

Q. What age would you recommend for consummation?

A. 16 in any case.

(Mr. Masani read out the appeal which is attached herewith.)

### *An Appeal.*

We hoped that after the Children's Act was passed we might see the dawn breaking after the long, long night of children's sorrow and agony, but we are still in the gloom of night. We harboured similar hopes when the Prevention of Prostitution Act was passed, but those dens of vice, those slave markets which encourage and facilitate traffic in girls and women, are still left untouched. We want the strong arm of the law to protect minors effectively and to stay the hand of the brutal from offending against national life.

I therefore appeal to you to think of the sorrows of children, the woes of womanhood, the degradation of manhood, the ruin of society, the infinite shame and pathos of our national life and move Government not to delay the necessary reforms any longer and not to countenance people who ask for the perpetuation of such tyrannies and atrocities in the name of religion which they merely profane. Assuming that there are certain sections of illiterate and orthodox people who are averse to reform on pseudo-religious grounds, assuming that a foreign Government feels bound to respect their sentiments, it must not be forgotten that there is a law higher than that of the Shastras—the law of Humanity which transcends all religious instructions and usages and enjoins that none shall offend against Humanity by doing anything that causes unnecessary suffering to a child or injures its health, physical, moral and spiritual.

# Oral Evidence of Dr. MANGALDAS MEHTA, Nowrozjee-Wadia Maternity Hospital, Bombay.

(Bombay, 29th October 1928.)

*Chairman:* I understand you are in charge of the Nowrozjee Wadia Maternity Hospital.

A. I am Honorary Principal Medical Officer there.

Q. How long has the hospital been in existence?

A. It has been in existence for the last 5 years. It has been put on a permanent basis two years ago. It is a maternity hospital and no other patients come here.

Q. Can you give us any figures with regard to girl-mothers below 13, 14, 15 or 16?

A. I have got only for one year 1928 for the Nowrozjee Wadia Maternity Hospital and for two years 1926 and 1927 for the Ruxmani Hindn Lying-in Hospital. (Statements\* produced.)

I find that the younger and weaker the mother the stronger are the children. Even in cases of tuberculosis I have found the same thing. The children are exceptionally strong.

Q. Is it not due to husbands?

A. I don't come across with husbands at all. In 90 per cent. of the cases I have found that that is so.

Q. What do you mean by younger mothers?

A. Between 15 and 18. Even if the mother is fragile the child will be strong. The older the mother the greater the chances of operative interference at the time of the first child-birth. No conclusions can be arrived at from the weight of the children. The best period of fecundity is between 20 and 25 and the second best period is 16 to 20. If there is early consummation and early maternity later on sterility sets in. In the Ruxmani Hospital there are only higher classes of people while in the Wadia Maternity Hospital there are entirely labouring classes of Bombay, particularly mill area people. About more than 50 per cent. are the labouring classes and the rest are poor people belonging to all communities and all walks of life. We have an Infant Welfare Society also. There are 9 Welfare Centres and I have given figures for the Cotton Green Centre (*vide* the statement\* attached last of all and marked G).

*Chairman:* What do you say about the Infant Welfare Centres and what are your conclusions by submitting these three statements?

A. We have got 9 centres in the city of Bombay. The women that come here mostly consist of labourers who work in the mills. They are quite illiterate. These women refuse to go to maternity hospitals or homes. When I asked the reasons for this they replied that they could not leave their children at home and go to a hospital or a home. They also replied that if a creche was introduced along with a maternity hospital they would be very willing to go to maternity hospitals. Their second reason is that they are generally afraid of going to maternity homes because certain hospitals might have acquired a bad reputation from their point of view. I will suggest that those women who refuse to go to a maternity hospital can be confined in their own homes and can be attended to by training nurses. That is also very good. For instance, the Port Trust have got 5,000 people and they have put up one at Mazagaon near the chawls which is going to be opened by Lady Wilson on the 16th December. Since it is being built in the heart of the chawls the parents and the children can visit whenever they like. Of course they won't be admitted inside the hospital but from outside they can see and they will be satisfied. Most of these women will take advantage of this institution if there is a creche attached in the middle of the city. The

same sort of experiment I am trying especially in the Worli ohawls where there are 15,000 workmen. My conclusion are:

(1) The best period of fecundity is between the ages of 20 and 25.

(2) The best period for delivery is between the ages of 16 and 20.

The results in both these cases particularly to the mother are not dangerous.

*Q.* When are they dangerous?

*A.* It depends on the circumstances. I do not personally think that the increase in the number of maternal deaths and infant mortality is due to the direct result of maternity or early marriages or anything of that kind.

*Q.* Do you want to connect the age of the mothers with the weight of the children?

*A.* No; nothing.

*Q.* What will be the condition if a girl gives birth to a child previous to 16? May we know what is your conclusion?

*A.* My conclusion is that although we may not see the immediate effects of early maternity, in later life they are sufferers. The first delivery case may be quite all right. Later on they do suffer particularly in the case of those in which there are repeated pregnancies and that is more or less the cause of ill-health in the mother life-long or even until deaths. Frequent deliveries are the most important causes of maternal mortalities.

*Q.* Maternal mortality is due to what. May we know the causes for this?

*A.* It is due to poverty amongst the people. If these poor people are receiving anti-natal care before pregnancy and they are kept in the hospital from the 7th month and if they are fed properly, they are quite safe and go through a safe delivery. Ignorance, poverty and bad anti-natal conditions together with a want of care and nourishment before labour lead to a great many disasters, and especially anæmia of pregnancies demands a heavy toll of maternity mortalities. It is concurrent with the pregnancy. This is the most important cause of maternity mortality.

*Mr. Mudaliar:* Has that a special relation to India?

*A.* It has a particular relation to India and especially in the Gujrati community.

*Mr. Bhargava:* You said that anæmia demands a heavy toll; what it is due to?

*A.* The medical practitioners are still finding out the causes and investigations are being carried on all over India. To say that early maternity leads to maternal mortality I don't quite agree. I think that it has a very bad effect in after life which directly leads to the death of the mother. I am not sanguine about it. At least amongst the poor people the cause of death, as I have said, is due more or less to the ignorance, illiteracy, poverty and the economic conditions from which they are suffering.

*Q.* Do children stand to suffer by early deliveries of mothers?

*A.* The children also do suffer or mothers under 16 particularly when the mother doesn't know her responsibility. She does not know how to feed the children and then the results to children are naturally disastrous. In the hospitals they are taught how to feed their children and they do so till they leave the hospital. When they go home under the influence of some old woman, overstuff the child and again bring the children to the hospital. It is due to ignorance and the evil influence of the old woman in the house that bring about more of infant mortality in this city than anything else.

*Q.* How do you connect this?

*A.* I connect this in this respect. It is due to want of mother's education and then later on if that mother is subjected to three or four pregnancies then usually the first child is never cared for.

*Q:* By itself has-it got-to-do anything with it? --

4. Yes. As I have said that these children of the poorer constitution are somehow or other better off than those which have a stronger constitution because the poorer class children are more fragile.

*Dr. Beadon:* Don't you think that there is injury to the perineum because of lacerations. Generally we find that the parts are likely to be injured because they are very elastic.

A. I don't think there is any particular injury to the perineum because of lacerations. What I am thinking of is that the moral and physical shock affects her more than anything else. You don't find any trouble in the labour itself because the parts are elastic. The only thing is that if there is disproportion between foetus and the mother's passage, then there is difficulty.

Q. At what age this elasticity diminishes?

A. It diminishes from the age of 21. After 25, I am very anxious because of non-elasticity of the parts.

*Mr. Kanhaya Lal:* We want to know what is the safe age for motherhood?

A. Nothing lower than 16.

*Mr. Mudaliar:* Would you have maternity at 16 or after 16?

A. Beginning of maternity should be after 16.

Q. Do you find osteomalacia in this district?

A. Yes: We do find.

Q. What is it due to?

A. It is due to late rickets.

Q. Do you find in women under 20 or over 20?

A. The development of rickets take place at the age of 12 or 13.

Q. What is this disease?

A. It is a disease in which the bones are mainly affected. This generally happens in children.

Q. Is it due to early child-birth?

A. It may happen in a girl giving birth at 17 but that is due to bad maternity. We find that osteomalacia is, more due to the absence of lime. It is also due in some of these mothers, sucking by children right up to two or three years. It is also due to this. But at the same time there are instances in which late rickets develop. They develop in a mother after 20 but not after the first birth, say, after 3 or 4 years.

*Mr. Mitra:* May I know whether a girl in India matures earlier than in Europe?

A. Yes. I should think so.

*Mr. Kanhaiya Lal:* You say that if 16 is complete, then it will be all right for safe motherhood.

A. Yes. I should say that the Age of Consent should be the age of marriage. They ought to be identical. They ought not to differ.

Q. If there are breaches of law, would the medical practitioners be willing to report them to the proper authorities?

A. I don't think so because they would lose patients.

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**Written Statement, dated the 14th August 1928, of Mrs. FAIZ B. TYABJI, Somerset Lodge, Warden Road, Bombay.**

2. I think an advance on the present law urgent. I believe early marriages harmful to the health of the mother and for the children, and it is necessary to prevent these, using all means in the power of the law.

4. Yes. The amendment of 1925 has in my opinion had all the 3 effects referred to in question 4. That public opinion is gathering on the point is shown both by the amendment of 1925 and the present proposal

7. So far as Islam is concerned consummation before puberty is prohibited and there is no injunction requiring consummation on attainment of puberty. Custom alone is responsible for early marriages amongst the poorer classes of Mahomedans in some parts of the country and the amendment and the present Bill (if passed) will effectively help these classes—as nothing else can. As it is permitted after puberty if either of the parties (both having attained puberty) desire to have sexual intercourse, the other party in fulfilment of his or her duties cannot resist intercourse.

No necessity exists for marriage being contracted immediately on attainment of puberty.

9. I think attainment of puberty is not a sufficient indication of physical maturity. Early consummation must arrest growth and development both of body and mind. I should myself favour marriage being compulsorily deferred till the 16th year, though in many individual cases it would be much more desirable that marriage should not take place till the 18th year or the 19th year. I do not imply that public opinion is ripe for prohibiting marriage even till the 16th year for girls. But I think an advance should be made.

12. Yes, most emphatically.

14. No.

21. I think both penal law and social reform should be employed to combat early marriages, as it is of vital importance to the Indian race.

### Oral Evidence of Mrs. FAIZ TYABJI, Bombay.

(Bombay, 29th October 1928.)

*Chairman:* Are you connected with any social reform movement in Bombay?

A. I am a member of several committees and I have been connected for a long time with Seva Sadan. I have been visitor of a number of hospitals.

Q. May I ask you if you had had any occasion to talk with Mohamedan purdah ladies on the questions now before us?

A. I think I have.

Q. Would you tell us what they think of it.

A. So far as ladies are concerned they would like it.

Q. Would they like penalising of marriages below a certain age or would they like to have a law of the Age of Consent?

A. It would be well for us to leave the marriage alone and the law of the Age of Consent should be taken into account. I am not prepared to say what they would like but that is my own idea. I had no definite talk about it with anybody.

Q. We are ignorant so far as the opinion in purdah goes and you are the person likely to know?

A. I can say that there is no law amongst the Mohamedans requiring marriage at a certain age. I have enquired from Mr. Faiz Tyabji and he says there is no such opinion. Therefore such a law would not be against Mohamedans. They have no religious injunction that marriage should take place at such and such time.

Q. What is said is that after puberty marriage and consummation of marriage is permissible.

A. That is amongst us. It is not permissible before that.

Q. Supposing you put the limit at 15 it will be that what is now permissible will be prevented. They say we have a right now and our right will be curtailed. What do you say?

A. That is right; we want to curtail that right for the general benefit of humanity.

Q. You have not been pleased to answer our question No. 20 which is to the effect, would you prefer the law of the Age of Consent raised or would you rather like to prevent marriages?

A. I would have the law of consent raised and also the law preventing marriages.

Q. What is the age that you would prescribe for marriages?

A. I should say 18 is the proper age. Even that seems low in certain cases but we must do the best we can with the present public opinion. I think we can safely go up to 16. I think outside marriage it should be 18. According to law a girl is considered fit to deal with property at 18, then why should she be considered mature to deal with her own life before that age?

Q. Do you think there has been any propaganda work behind the purdah?

A. Very little. There are different communities and I think Mohademans are also divided into sections.

Q. Do you know of any Mohamedan community where propaganda work has been done?

A. I know of my own community, viz., Sulemani community. I know certain people in Satara. I was interested in a certain girl and I enquired why they married her. They said that it is a custom and if anybody does not marry his daughter young they think there must be something wrong with the girl.

Q. Do you find that is the case with a large number of classes?

A. Not large number but there are people belonging to the poorer classes.

Q. Is there any class of Mohamedans in Bombay amongst whom you think there is early marriage, say, at 13 or 14?

A. Yes, among the Daudi Boras and also among the Memons. Very young girls are married and there is a very great toll of human life.

Q. Do you think they become mothers by 15 or 16?

A. Yes, immediately after marriage consummation takes place. There is an all-round advance now wherever there is general education.

Q. But still you say the evil exists in those communities?

A. Yes. A mother of 13 or 14 would not be capable of anything like looking after her children properly.

Q. You know any other class of Mohamedans outside Bombay?

A. I know to a certain extent Sind Mohamedans. They are very bad.

Q. Are there a good deal of early marriages among them?

A. I cannot say about early marriage but it is due to early inarriage and ignorance combined.

Q. If there is any risk of dissatisfaction to be caused by penalising marriages or by raising the Age of Consent, would you still advise advance notwithstanding the risk?

A. Yes.

Dr. Beadon: Can you compare the physique of the Mohamedan communities who marry early with those who marry late like Sulemanis?

A. I should say the physique among Boras is undermined, their physique is not generally good. I think there is a lot of consumption among the women in Boras.

Q. Is it more among the Boras than among the Sulemanis?

A. Sulemani is a very small community.

Q. Can you compare Memons and Boras?

A. I would not be able to say that.

Mrs. Nehru: You say that you do not think that there is any religious injunction to have marriages and consummation of marriages to a certain age among the Mohamedans. Is this belief shared by the Mohamedans generally?



A. I cannot say that but I think it is. At least I have never heard that it was necessary that a young girl must be married because of any religious injunction.

Q. Have you heard anybody raising objection in connection with the present law?

A. I have heard about it but there is no ground for it.

Q. You do not think that belief is widespread?

A. No.

Q. What is the state of education among the Mohamedans in Bombay?

A. They are extremely backward; they are illiterate. Just a few richer classes are educated but even among them the literacy is not very much. During the last 2 years people are trying to do their best but the present condition is very bad.

Q. You must have a large experience of educated girls marrying after finishing their education. Do you find that their physique is weaker than the uneducated girls who have not undergone the stress of education?

A. No. I have not come across a very large number of them but so far as I know I do not think that is the case. The educated girls of the present day are much better than the uneducated ones because they know how to look after their health. While at school they take a lot of exercise, they play games.

Q. Is that your personal experience?

A. So far as my experience goes I can say that.

Q. When a very large meeting was held a few months ago under the auspices of the Bombay Women's Conference did Mohamedan women take part?

A. There were a certain number of Mohamedan ladies but not large.

Q. From which sects of the Mohamedans did they come?

A. There were a good many ladies from our community but there might have been one or two Khoja ladies also but I do not think there was any Memon lady. Even those who are educated and come out never attend meetings of that kind; they might go to parties.

Q. Have you known any marriage or any consummation of marriage being postponed on account of the existence of this law?

A. No.

Q. Do people generally know about the existence of the law of the Age of Consent?

A. No. I think the law itself will be very good if there is propaganda.

*Mr. Mudaliyar:* Have you any suggestion to make as regards the punishment that should be given in marital cases? Would you make a difference if a girl is below 12 and if she is between 12 to 16?

A. So far as my experience goes husband and wife do not live together. It is a matter of common knowledge that parents send their girls. If there is punishment I suggest there should not be such drastic punishment as to spoil the lives of both. I think heavy fine would be the best.

Q. In all cases whatever the age of the girl may be?

A. Yes.

*Maulvi Mohd. Yakub:* Even below 12 when there is physical injury?

A. I think it is the duty of the parents to protect the girls.

Q. You think parents are more to be blamed and they should be prosecuted and more severely punished than the boy-husband.

A. Yes, I think so.

Q. What punishment would you award to the parents?

A. I think fine would be sufficient.

Q. Even if the girl is below 12 and there is a great physical injury which may result in death?

A. I think imprisonment may be prescribed, but I would leave it to you to decide.

Q. You would deal with them more severely?

A. Certainly.

Q. May I know you belong to Shia or Suni?

A. Shia—Sulemani Boras.

Q. Do they give religious education to their girls?

A. Yes, fairly well.

Q. What books of religion have you read?

A. We have our own religious books by our own Mullahs. They are not very different from the Quoran and Shariat. They are not all read by the girls, at least I have not read them.

Q. What religious books have you read?

A. I have read Quoran. We give girls religious instruction.

Q. If the Maulvis of your community give a fatwa to the effect that fixing an age for marriage or an age for consummation is against the Mohamedan Law what would you say?

A. I would ask the lawyers.

Q. If they do would you submit to the fatwa or would you rebel?

A. I would better wait for the position to arise.

Q. What would you advise other communities whose Maulvis say that it is an interference in religion and such a law should not be enacted?

A. I would not advise.

Q. You suggest that the Age of Consent should be raised to 16.

A. Yes.

Q. Don't you think there will be many breaches of this law than they are now and consequently many more society scandals and domestic troubles?

A. I have a feeling that it would not.

Q. If a girl of 15 and a boy of 17 or 18 are allowed to live together in the same house are not the chances of their cohabitation stronger? It is quite different when the girl is 13 or 14 because naturally the husband would be of a smaller age but when the girl is 15 years and the boy is 18 years, don't you think there are more chances?

A. I would not like them to live together. In our own community they do not marry very early.

Q. Same is the case in other communities. For instance, you say, Boras marry their girls at a very early age.

A. I could not be quite sure but the custom is when marriage takes place very early they do not live in the same house; the girl lives with her mother.

Q. Rukhsati ceremony does not take place among your community?

A. No.

Q. If a girl is 15 years then Rukhsati ceremony will take place at the time of Nikah?

A. Marriage should not take place before 16.

Q. Do you insist upon Rukhsati ceremony taking place at 16?

A. Yes.

Q. Nikah may take place at any age?

A. Yes.

Q. Among the Daudi Boras is infant mortality very high?

A. It is high.

Q. Is it higher than in your community?

A. Certainly.

Q. What about the health of these girls?

A. The health of the mother seems to be very bad and we hear of so many young wives dying within a year or two.

Mr. Bhargava: So far as Rukhsati ceremony is concerned it is particular to certain communities?

A. It is not a custom among us.

Q. So that unless marriages are prohibited—and not the Rukhsati ceremony—the object will not be served?

A. People who would be punished would naturally think about it.

Q. Supposing there was a law like this that Rukhsati should not be performed before 16 it will have no effect because Rukhsati is not performed among certain communities.

A. I think consummation deals with both.

Q. I understand that you are in favour of prohibiting marriages below a certain age?

A. I am only concerned with consummation of marriage; it does not matter when the marriage takes place.

Q. If once a marriage takes place it is very difficult to know when the consummation takes place?

A. When marriage has taken place consummation cannot take place. when the girl is young because among Mohamedans consummation before puberty is *Haram*.

Q. But the girl attains puberty at the age of 13 or 14 and according to you consummation should not take place before 16?

A. The question will be that unless you make different laws for different sects it will be difficult to avoid religious sentiments.

Q. Have you got some experience of Hindus also?

A. Yes, I have a lot of Hindu friends.

Q. Will they have any objection to the age being raised?

A. I think among the educated Hindus certainly there will be no objection

Q. There will be no religious objection?

A. So far as religion is concerned so many laws have been made which are against religion.

Q. Suppose it is of vital importance to the communities then is your opinion that marriage law is absolutely necessary?

A. Yes.

Mr. Kanhaiya Lal: Do you think it will be possible to organise women associations to help us in finding out cases of infringement of the law?

A. There are women's associations but whether they will be able to take up this work or not I cannot say.

Q. Can you suggest any other measure for bringing these cases to light where the law of the Age of Consent is infringed?

A. I cannot think of anything.

Q. Do you think communal panchayats will be able to help us in the matter?

A. I think they ought to. Each community could do a great deal for itself. It will be very difficult for outsiders to find out things.

Q. Would you recommend vigilance societies in towns and villages?

A. We have one in Bombay.

Q. Would you constitute similar societies in other places to watch the infringement of the law?

A. Yes, they would help.

Q. Should they be of a voluntary character or should they contain nominees of the district boards?

A. I have no objection to their being nominees but I do not see any necessity.

Q. Would it be preferable to have marital cases tried by matrimonial courts instead or by regular courts?

A. I think the courts should be of a private nature as far as possible.

Q. Would you recommend courts consisting of a magistrate and one or two non-officials?

A. I think it would be better to have a magistrate and two non-officials and proceedings should be conducted in camera.

Q. In order to bring about good feelings between the husband and wife, would you like the cases to be compounded?

A. I think every means should be tried so that there may be a restoration of good feelings.

Q. Even in cases of serious injury such compounding might be allowed with the sanction of the court?

A. It should be in the interests of the girl.

Q. Have you got a system of registration of marriages?

A. Yes.

Q. Who maintains the register?

A. There is a register kept in the Jamat and every time a marriage takes place it is entered.

Q. Is a fee charged for entry in the register?

A. I could not say.

Q. Would you like such registers to be maintained by the municipality or by the Government?

A. I think the registers would become very unwieldy. I think they should be maintained separate by each community.

Q. Other communities are not keeping registers.

A. They should be asked to keep it.

Q. If they do not keep?

A. But it will become such an unwieldy affair.

Q. Would it be more unwieldy than the registration of births and deaths which are maintained at present by municipalities.

A. Even that is very unwieldy; you find it extremely difficult to find out an age.

Q. But the number of marriages will be much fewer than the number of births and deaths?

A. I am afraid I am not competent to reply to that.

## Oral Evidence of Dr. Miss CAMA, Inspectress of Factories, Bombay.

(Bombay, 30th October 1928.)

Chairman: I understand you have been appointed by the Government as Inspectress of Factories.

A. Yes.

Q. What is the work assigned to you?

A. I go to the factories, see the women working there and do general welfare work amongst them, especially in the opening of creches.

Q. Is that in connection with the mills?

A. Yes.

Q. Do most of the mills have creches?

A. Yes; but I am inducing those who have not got them to open such creches.

Q. How many factories have you got to visit?

A. I have to visit the factories in the whole of the presidency. The special work assigned to me is to create creches. I persuade millowners to appoint lady doctors to look after the women and children. I also see if there is any sanitary or any other arrangements necessary for these women and children and do the needful.

Q. Are you a sort of advisor to the Government with regard to the women of the labouring classes?

A. I have all the powers of a Factory Inspector.

Q. And you yourself are concerned with women.

A. Yes.

Q. In the course of your work are you conversant with the conditions of labour and the health of the women and their children?

A. When I go into the creches I do get chances of seeing the women and the children there. I do not know anything about the children because I go there to see if the women are fit to work in the factories.

Q. Can you generalise and say what is the age of earliest motherhood amongst the women of the labouring population?

A. I think it is about 18 and beyond that. At least it is so in the case of the women who come into the factories.

Q. Girls below what age are prohibited from working in these factories?

A. 16 is the age for full timers. It is less for half-timers, but the practice of allowing half-timers to work in factories has been discouraged. Therefore there are only a very few girls who are below 16.

Q. Really speaking you have no occasion of dealing with women below 16.

A. No.

Q. Why is the employment of girls below 16 discouraged?

A. These half-timers generally work in two factories and there is a Factory Inspector who objects to their doing work in two factories.

Q. Is it on account of the health of the girls?

A. No; it is chiefly because these girls work in more than one mill.

Q. I understand that minor labour is prohibited by Factory Laws. What is the age under which it is prohibited?

A. It is prohibited below 12.

Q. Is any provision made for the girls of the mothers who work in these factories?

A. No; but when I find any girl who has nobody to look after her, I persuade the agent of the mill to get her into the creche. These girls go to schools now-a-days.

Q. Is there compulsory primary education in these cases?

A. I do not know.

Q. Are you allowed to have private practice?

A. No.

Q. I do not think you are really in a position to tell us anything about girl-mothers below 16.

A. No.

Q. Can you give us any facts that you think will help us in this enquiry; do you know, for instance, what the age of consummation amongst these women is and what is the age of puberty?

A. I do not know anything about consummation, but puberty amongst them is generally about the age of 13.

Q. Do you think that consummation follows soon after puberty?

A. I have not found it so in the working class women.

Q. Have you any occasion to visit the Chawls?

A. Yes.

Q. Do you get any information from there?

A. Yes; I have taken a certain number of women and taken statistics about them. I examined about 34 or 35 women this year. The women were in one particular department in one mill and I worked there for about a year collecting information.

Q. What was the age of maternity in these cases?

A. None below 18.

Q. Do you think these girls that you saw are better than people of higher classes and have better powers of endurance?

A. They have better powers of endurance because they generally work so hard.

Q. Do you think that there is a very large amount of infant mortality amongst the labouring classes?

A. Yes.

Q. Is there any Government report about it?

A. I think there is a municipal report about it. I think the infant mortality in Bombay is 666 per thousand. I am not sure about it.

Q. Would you be able to say what it is amongst the labouring classes?

A. It is very difficult for me to say.

Q. I understand that an enquiry was held in 1921 by a lady doctor on this subject. Do you know who that was?

A. Yes; it was Dr. Barnes.

Q. Is that a printed report?

A. Yes. There is also some information on that point in the *Labour Gazette*, dated December 1924.

(The witness here referred the Chairman to page 384 of the *Labour Gazette*, dated December 1924.)

Q. Have you ever been able to make any generalisations from these figures, if there is any connection between child mortality and early consummation of marriage? Can you say that early consummation is connected with the deterioration of the health of the girls?

A. I think so, but I will not be able to prove it.

Q. Your experience is apparently with girls over 16.

A. Yes.

Q. Are you also in charge of the Children's Aid Society (Ronald's Home)?

A. Yes.

Q. Would you be able to give us any facts in connection with them? Have you got any views or any inferences that you have drawn from them?

A. Only girls of 7, 8 or 9 come there. But I remember one or two cases, which I came across in another connection. One was a girl of 11 last year. She is about 12 now. When the girl came to me she was a bundle of nerves. She had received severe injury to her private parts.

Q. Was that a case of rape or was it a case of marital relations?

A. It was a marital case.

Q. To what caste did the girl belong?

A. Muhammadan, Pathan girl. I have had a lot of trouble with the girl. She is just getting normal but her husband wants to take her away. I know also of another girl. She had received no injury, but I think her development would be hampered.

*Q.* Have you had occasion to notice if her development has been hampered?

*A.* It is too early to say that. It is such a short time. I had no opportunity of seeing any other girls.

*Dr. Beadon:* Is doping of children practised amongst mill-workers?

*A.* Yes.

*Q.* Every mill has a creche in which children are put. Below what age do you get children there?

*A.* I have had children aged about a month to children aged about 7 months. I do take girls that have nobody to look after them.

*Q.* The number of women in these mills should be an enormous one, is it not?

*A.* It is about 34,000.

*Mr. Mitra:* What would you consider to be the ideal age for marriage?

*A.* 18.

*Q.* Do you think that 16 would not be safe?

*A.* No.

*Q.* At what age do you think can Indian girls give an intelligent consent to cohabitation with due realisation of the consequences?

*A.* I do not think below 18.

*Q.* What is the usual age of puberty of Indian girls?

*A.* About 13.

*Q.* Do you think that a certain period should elapse after puberty before consummation can take place, and, if so, what should be that period?

*A.* I think it should be at least 5 years, so that it may come to 18.

*Mrs. Brij Lal Nehru:* What are your functions as an Inspectress?

*A.* As I have already said my special work is to attend to the women working in the factories and get things done for them and their children by way of starting creches, etc.

*Q.* Do you find that these factory women generally go to their homes for confinement?

*A.* I am not directly concerned with them, and I have no knowledge about that.

*Mr. Kanhaiya Lal:* Can you tell us whether the infant mortality amongst the labouring classes is 80 per cent.?

*A.* I cannot say.

*Q.* Can you tell us what the average weight of babies amongst them is?

*A.* I have no experience.

*Q.* In the Wadia Maternity Home we are told it is between 5 and 6 lbs. Another witness told us that it is between 4½ and 5.

*A.* I think 5½ to 6 lbs. is more common.

*Q.* We are told that the high rate of infant mortality amongst the labouring classes is due to the insanitary surroundings, and to want of proper nourishment, and proper air. Do they get sufficient milk supply and air and light? Are these largely responsible for the high rate of infant mortality amongst them?

*A.* I think so.

*Q.* Does that affect the infant mortality of the city as a whole and make the mortality of the Bombay City so high?

*A.* I think so. I do not think they get enough milk because they do not have enough money.

*Q.* Are they getting on all right so far as maternity is concerned?

*A.* It is very difficult to persuade them to go to the hospital. Now they are taking advantage of the Wadia Hospital. But I think they ought to take still more advantage.

Q. Is the maternal mortality high in the Chawls ?

A. I have not found it so.

**Written Statement, dated the 20th August 1928, of Dr. Miss KASHI-  
BAI NOWRANGE, B.A., L.M. & S. J. P., Honorary Secretary,  
Arya Mahila Samaj, Bombay.**

There is no doubt that there is great dissatisfaction with the present law on Age of Consent. The general feeling is that the present age is too low and ought to be substantially raised as early as possible. In this connection my Committee would like to point out that even in 1891 when legislation on this subject was first enacted, Government had admitted that the age then fixed was very low, but pleaded their inability to fix a higher age in view of the strong opposition of the orthodox section of the community.

2. My Committee is not aware of any circumstances which would justify retaining the law of Age of Consent as it is. Even the orthodox section of the community has now realised that in the interest of national progress, it is desirable to have a higher Age of Consent. Social and economic conditions of the country of the present day are quite different from what they were in 1891. The increase from 12 to 13 in 1925 was really of no consequence as the physical and mental development of a girl of 13 does not differ materially from that of a girl of 12. If the object underlying the law of Age of Consent, namely, safety of the girls from physical, moral and intellectual points of view is to be secured, there is no doubt that a substantial advance on the present law is imperative. Owing to social and economic changes referred to above, girls now-a-days are not married as early as they were in the past. They have also to seek in increasing numbers, employment in factories and other occupations. Having regard to all these circumstances, it is essential to make a substantial advance on the present law.

4. (1) The amendment of 1925 could not be expected to be very effective in postponing the consummation of marriage as it raised the age by only one year, i.e., from 12 to 13.

(2) As regards public opinion ever since 1891 it has been growing in favour of a higher Age of Consent in marital cases and was not satisfied in 1925 with the increase from 12 to 13 which for reasons stated above in reply to question No. 1, was really of no consequence.

(3) The age of marriage has been rising progressively for a long time past, and the amendment of 1925 is not in any way responsible for putting off marriages beyond 13.

In the opinion of my Committee one of the most effective steps in protecting married girls against premature cohabitation with husbands would be to have a law fixing 16 as the minimum age of marriage for girls.

5. Generally girls attain puberty during the age of 12 and 14. The age at which a girl attains puberty depends more on her mode of life and social environment than on the caste or community to which she belongs.

6. (1) Cases of cohabitation before puberty are not uncommon among certain classes of people.

(2) They are common soon after puberty in many communities.

(3) They also occur sometimes before the girl completes 13 years.

Very few cases come to Court because people as a rule do not like to give publicity to such matters as in most cases publicity means ruining the future of the girls.

7. There is no doubt that persons who advocate or permit the practice of early consummation before or at puberty do so on religious grounds. But my Committee is not aware of any religious authority for such practice. My Committee would like to mention that one of the beliefs which is responsible for early consummation is that a girl is not considered to be pure after



puberty and is therefore not competent to perform puja or participate in religious rites till consummation has taken place. But there is no doubt that this belief is fast disappearing.

8. In certain communities "Gaona" or "Garbhadan" ceremony is performed before consummation. It usually coincides with the consummation of marriage and generally is performed soon after the attainment of puberty.

9. My Committee is of opinion that the attainment of puberty is not at all an indication of physical maturity to justify consummation of marriage. A girl should be considered to be physically developed for consummation when she can attain motherhood without injury to her own health and to that of her progeny.

In reply to question No. 4 my Committee have recommended that 16 should be fixed by law as the minimum age of marriage for girls and therefore my Committee is of opinion that cohabitation below the age of 16 should be penalised. In other words the Age of Consent against husbands should be fixed at least at 16. As regards strangers my Committee is of opinion that it is essential to give protection to girls up to the age of 18, and therefore the Age of Consent in these cases should be fixed at 18. A girl is considered to be minor for all purposes till she attains the age of 18, and therefore it stands to reason that where her moral and personal safety is concerned, the law of the land should give her protection against strangers until she attains majority.

10. It is very difficult to give a definite reply to this question. Everything will depend upon the girl's environment and up-bringing, but for reasons stated in reply to question No. 9, an unmarried girl should be considered not legally competent to give an intelligent consent to cohabitation till she attains majority.

11. Cases of young girls becoming mothers at the age of 13 or 14 are not uncommon. Early motherhood of this nature not only results in birth of weaklings but also shatters the health of the mothers. It is also responsible for prevalence of diseases like anæmia, tuberculosis and osteo-malacia among women.

12. Yes, certainly. The birth mortality amongst women and children in India is largely due to early consummation followed by early maternity. Children born as a result of early maternity are bound to be weak and ill-developed, and generally suffer from diseases like rickets, anæmia, etc. Therefore, there can be no doubt that early maternity is bound to affect adversely the intellectual and physical progress of the people.

13. In the opinion of my Committee there has been a general development of public opinion in favour of an extension of the Age of Consent. Such development is more marked in the cities as a result of propaganda carried on by social workers.

14. There is no doubt that women understand the consequences of early consummation of marriage and do not therefore really favour early consummation of marriage of their children; but very often they have to yield to the exigencies of long established custom. However, it cannot be denied that there is a growing opinion among women not only against early consummation but also against early marriage itself.

17. The two offences should be separated. The same punishment as at present should stand in extra-marital cases, but as regards marital offences if the age of marriage is raised sufficiently high, very few marital cases will arise, and my Committee suggest that a lighter punishment should therefore be provided in such cases.

18. Yes. In the opinion of my Committee marital cases should be tried in camera.

20. There is no doubt that penal legislation fixing the minimum of marriage at 16 as suggested in reply to question No. 4 will be more effective and public opinion will also be more favourably inclined to fixing the minimum age of marriage. But at the same time penal legislation fixing a minimum

age for marriage may not altogether prevent child marriages and therefore it is also necessary to have legislation fixing the Age of Consent in marital cases.

21. Certainly. My Committee would rely on education and social propaganda for the progress of social reform. But experience has shown that the aid of social legislation is absolutely necessary to accelerate the progress of social reform.

**Oral Evidence of Dr. Miss KASHIBHAI NOWRANGE, Honorary Secretary, Arya Mahila Samaj, Bombay.**

*(Bombay, 30th October 1928.)*

*Chairman:* I understand that you are the Honorary Secretary of the Arya Mahila Samaj.

A. Yes; I have been asked to represent the Bombay Provincial Women's Council also.

Q. May I take it that their views are in unison with yours?

A. Yes.

Q. Have you had a wide experience of confinement cases and women diseases?

A. Yes.

Q. For how many years have you been practising?

A. 21 years.

Q. Do you deal with all classes of women?

A. I deal with the Dakshini and Gujarati women mostly and a few Muhammadans.

Q. Does early consummation take place amongst some of those classes?

A. Yes, amongst some of them it does take place. For instance, amongst the Marwaris and some but not all of the Gujaratis. Those who have become inhabitants of Bombay do not generally go in for early marriages.

Q. Would you be able to say, for instance, that there is a large majority of marriages below 13 in Bombay?

A. Yes; in some communities but not in all.

Q. Can you give us any instances of advanced communities in which marriages below 13 do not generally take place?

A. The Prabhus, Dakshini Brahmins and the Saraswats.

Q. Can you tell us if there are communities which have not yet advanced in this respect?

A. The Gujaratis cannot on the whole be said to be quite an advanced community. The same is the case with the Marwaris.

Q. What about the Kamatis or the Telugus?

A. I do not know much about them.

Q. Have you had infant mothers below 13, 14, 15 and 16 in the confinement cases that you get?

A. Up to 15 I have had cases, but not below 15. 16 and above were very common.

Q. Have you ever attended a girl-mother below 14?

A. No.

Q. Do you hear of any cases like that or are they uncommon?

Q. In Bombay itself we hear of them for the child welfare centres. But otherwise I do not hear of them except in the papers.

Q. For instance in your 21 years' experience, have you not confined a girl-mother of 14?

A. I have not conducted any confinement cases of girls of 14. I had one or two girls of 15 and all the rest were 16 or above 16.

Q. What have you found to be the result of motherhood on the girl of the lowest age you have dealt with?

A. Such girls are not generally strong. The mother's nervous system is very often affected. They are mostly timid and sometimes hysteric. In some cases they become anæmic and sometimes tubercular. Sometimes they get osteo-malacia.

Q. Would you say that their vitality is affected?

A. In some cases it is.

Q. Supposing these girl-mothers do not have incessant child-births at very frequent intervals, we are told that they would not suffer to the same extent. Is that so?

A. Frequent confinements will make them suffer more; all the same child-mothers ought to suffer in some way or other, unless their constitution is very very good to begin with.

Q. Out of the many causes that make up the sum total of infant mortality what is the proportion you would assign to early consummation and early marriage?

A. It is difficult to answer it without statistics.

Q. Would you consider that a girl-mother after 18 would be generally safer from the troubles that girl-mothers of 14 and 15 suffer from?

A. In many respects she will be safer because she will be better developed than the girl of 14 and 15.

Q. From your experience do you think that they are better off than the girl-mothers of 15 and 16?

A. I think they are.

Q. What age do you think would be good enough for safe motherhood?

A. About 20 to 21; not earlier.

Q. But in your written statement you have suggested 16.

A. That is the opinion of my Association.

Q. Do you then agree to 16 as a first step?

A. If you cannot get the best, you must be satisfied with what you get.

Q. Then you think that ordinarily 20 or 21 would be the safe age for motherhood.

A. Yes.

Q. In reply to question No. 2 you say that the orthodox section has now realised that in the interest of national progress it is desirable to have a higher Age of Consent. On what do you base this?

A. I mean town people because I have no experience of the villages. Because the orthodox people come into contact with the enlightened people in towns, their own education is advancing and they advocate the higher age for marriage.

Q. In para. 6 you say that cases of cohabitation before puberty are not uncommon amongst certain classes of people. What are the classes of people amongst whom such cohabitation takes place?

A. I mean those classes which have marriage at the time of cohabitation, for instance, the Banias and the Bhatias. About others I do not know.

Q. Is that common now?

A. I think it is common in certain sects. I have not got first hand knowledge. It is also common in some sects of Brahmins of the Maharashtra community.

Q. What is the age of the girls where these happen?

A. Formerly it was low. Now generally the age of marriage is increasing and the age of consummation is also going up.

Q. What is the usual age of puberty in this part of the country?

A. Between 13 and 14.

Q. Have you any reason to believe that there are cases of consummation of marriage below 13?

A. I have got reason to believe that there are cases. When a man marries a second or third time the girl is sometimes 11 or 12. I have seen cases where such consummation has taken place and the girls have suffered.

Q. You say that such cases do not come to court because of the ruin it will cause to the girl and the scandal attached to it. Do you suggest any remedy for alleviating this, for instance, by reducing sentences or holding the trial in camera?

A. We have suggested that marital cases should be heard in camera.

Q. Do you suggest that if the cases are heard in camera more cases are likely to come to light?

A. It is very difficult to say that. I cannot myself think of an effective remedy.

Q. You say that cases of young girls becoming mothers at 13 and 14 are not uncommon. Are you referring to the case of second husbands?

A. In the Infant Welfare Centres we see mothers below 14. It is from that I say it, and not from my own experience.

Q. Have you had any occasion to talk with women of orthodox families so as to be able to know what views they really have with regard to consummation of marriages and the marriages of their children?

A. I have come across orthodox people who live in Bombay, but they are not very orthodox. We had discussions in our meetings and most of them thought that the age ought to be raised. We had public meetings also. They were of opinion that the age of marriage should be raised to 16 at least.

Q. You have suggested lighter punishment in cases of marital relations. What sort of lighter punishment do you want? Now above 12 and below 13 it is 2 years' imprisonment. What is the punishment you would suggest?

A. First of all we must begin to enlighten the people about the law and tell them how they would be held responsible for their actions. For that I would suggest registration of marriages; and from those who contract marriages below the prescribed age, we might take securities for preventing consummation below the age fixed for consent. If an offence is committed in spite of the law, some fine should be imposed.

Q. Would you have a heavy fine?

A. If it is too small it would not be effective.

Q. Would you have registration of marriages and note the breaches of the law then and there?

A. In case of marriages that take place before the age fixed for the Age of Consent we might take a bond from the parties undertaking to postpone the consummation till the prescribed age.

Q. Would you have it even if we have a law penalising marriages below a certain age?

A. If that law is passed, the Age of Consent Law is not necessary in marital cases at all. What I mean is that in marital cases the age of marriage should be the same as the Age of Consent. I would like the minimum age of marriage to be fixed first, and will have nothing to do with the Age of Consent in marital cases. In this respect my opinion is different from the statement where you have the opinion of the Association.

Q. Are you of opinion that once a marriage is permitted outside interference would be bad after that?

A. Yes.

Q. You say that even if there is legislation fixing the age of marriage it may not effectively prevent child marriages, and therefore it is necessary to have legislation fixing the Age of Consent. Is that your opinion?

A. I mean in case the age of marriage is lower than 16. In that case I would have the Age of Consent fixed at a higher age.

Q. Supposing the age of marriage is fixed at 14?

A. Then I would have the Age of Consent at 16.

Q. It has been suggested that the age of marriage and the Age of Consent are automatically increasing on account of several reasons, prudential, economic and other reasons, and that therefore we do not really now want any law, that being more or less an interference with the domestic affairs of the people. What is your idea?

A. The age is increasing only in certain sections, but not in all. The majority of the people are still having early marriages.

Q. But people say that even as those who are having late marriages did not do so under coercion, the rest will follow without the intervention of any law.

A. I do not think it is coming up so soon as they expect.

*Dr. Beadon :* You told us that in the Welfare Centres you have come across mothers at 14. Can you compare these girls at 14 with the women of 16 or 18 who are mothers. Are they strong and healthy or do they suffer in any way?

A. Young mothers do suffer. Of course I do not belong to the Child Welfare Centre myself. I have read of these cases from the reports.

Q. You said that young girls are married to elderly men in second or third marriage. Is that very common?

A. Yes; it is very common.

Q. What would be the ages of the men?

A. The men would sometimes be 45 or 50 and the girls 11 or 12.

Q. In any of these cases was there any injury?

A. Yes; a girl was brought to me and she was treated by me a number of days. The girl had been very badly lacerated and mutilated.

Q. What was the caste of the girl?

A. The girl was a Hindu from Indore or Ujjain.

Q. In your experience would you say that early consummation is by itself harmful though there may not be pregnancy?

A. It tells upon the general condition of the girl, and it does lower her vitality, I think.

Q. What about the children of these girls of 15 or 16? Are they generally fairly healthy or are they below par?

A. In most cases the first born are below par.

Q. You must have had opportunities of following up these children in your practice. Do you think that these children develop all right later on?

A. In some communities they do, for instance, the Bhatia community. In these communities they engage wet nurses because they are rich enough to afford it, and the babies thrive very well.

Q. Do not the mothers nurse the babies?

A. Amongst the rich classes mothers have not milk enough to give the babies; at least they say so.

Q. So that in people who are rich enough children are likely to thrive?

A. They thrive better even though the mothers are young. Girls of the Bhatia community and their children do not suffer so much as some other communities I have known.

Q. Do the young mothers not nurse the babies because of the trouble or is it really because they have got no milk?

A. At least they say they have not got milk.

Q. Amongst what communities is osteo-malacia common?

A. The Brahmins and the Borahs.

Q. When do you think these people get osteo-malacia?

A. It starts with puberty in some cases. Sometimes it starts with the first or second confinement.

Q. Is it above or below 20 that this disease starts?

A. I think it is about 18 to 20.

Q. Do you think there is any connection with rickets and osteo-malacia?

A. There is connection.

Mrs. Brij Lal Nehru: Have you treated any cases amongst the Marwaris and the Gujaratis?

A. A few.

Q. Amongst these communities have you not come across mothers younger than 15?

A. There might be mothers, but the confinement cases have not come to me.

Q. Amongst the Gujaratis have you come across any girl-mothers?

A. Only a few of 14.

Q. Is it your experience that the children of young mothers are healthy?

A. No.

Q. Some witnesses have told us the weaker the woman the healthier the child?

A. That is absurd.

Q. Have you noticed any difference between children born to a girl-mother early in life and those children born later in life? Supposing a child is born at the age of 14 and another at 20. Will the child born at the age of 20 be healthier than the child born at the age of 14?

A. You cannot possibly say that the former will be better because the mother's health is already shattered and the child-mother will be weaker.

Q. We are told by some people that although the first child suffers, the second and third babies are much better. Is that your opinion?

A. If the mother's health is kept up it may be so but it is not generally the case.

Q. When the women's conference advocated raising of the Age of Consent to 16 in marital relations did they realise at that time how difficult it would be to do it? They might not have considered the difficulties involved in its operation?

A. They thought that it was feasible to raise the Age of Consent to 16 and it was passed.

Q. There you do not think that they realised the difficulties?

A. No.

Q. If the women's associations are instituted for the purpose of reporting such cases will there be any difficulty in Bombay in finding out sufficient number of such ladies?

A. I think in all big towns you will find such ladies coming forward. About villages I am doubtful and those are the places where you want such work.

Q. In villages wherever there are panchayats, don't you think they can do this work?

A. I have no idea.

Q. Would you like to make these offences cognisable?

A. I would like to have some sort of punishment if it is to be made cognisable.

Q. What arrangement would you like to make for the investigation of such cases?

A. I have not thought over it but I think some court like the Children's Court will do.

Q. But who will bring in the evidence and investigate?

A. When these ladies' associations are going to take up the work, I think they will be the proper bodies.

Q. If medical men and women are asked to make complaints of cases they come across, will they do it?

A. The hospital authorities can do that but not the private practitioners.

Q. In your answer to question No. 6 you say that girls are not considered pure and not allowed to perform puja after the appearance of menses. Can you tell me which particular puja you refer to?

A. I do not know that; I understand very little of these old ceremonies but our president told me that it was very common in Maharashtra side.

Q. You do not think that on that score the girl is prohibited from entering the temple or worshipping?

A. I think she is prohibited to worship in a temple.

Mr. A. Ramaswami Mudaliyar: Are you referring to the few days after appearance of menses during which the girl is supposed to be polluted?

A. No. After puberty till the Garbhadan ceremony she is kept out of certain ceremonies.

Q. You are very particular about the law of marriage. Supposing 12 is fixed for marriage, would you like to have that age or rather not have any age?

A. I would rather not have it. Personally I would have 18 but through my association we have recommended 16.

Q. Up to what age would you say it is not worth having?

A. Not below 16.

Q. You would rather have the present state of affairs than to have a law fixing the age of marriage at 14 or 15?

A. It may be somewhat difficult but then we want the age of consent.

Q. Up to what age the ladies think is the minimum below which they will say let us have the present state of affairs than this farce legislation?

A. 16.

Q. You are really against Mr. Sarda's Bill unless it is amended?

A. We have supported Mr. Sarda's Bill.

Q. You recommend that between these 2 years bonds should be taken?

A. I suggested that all the marriages should be registered at the time of marriage and if the girl is below 16 bonds should be taken from the parties contracting the marriage to the effect that consummation will not take place before 16.

Q. That is without reference to the offence having taken place?

A. Yes.

Q. If the boy is minor the parents or guardians will give the bond and they will be punished if it is infringed?

A. The parents of both the parties will be responsible.

Q. If the boy is a major?

A. Then bonds will be taken from the boy.

Q. Supposing the boy is minor at the time of marriage but attains majority after a year or so before the girl reaches 16, whom would you punish? The bonds will have been executed by the parents but you cannot penalise them because the boy is major. How would you solve that?

A. I think the boy should be informed of the bond.

Q. What punishment would you give to the parents if the bond is broken?

A. Heavy fine.

Q. Would you inflict that fine if it is proved that the parents are not responsible for breaking the law or would you inflict it whatever the circum-

stances may be? Supposing the boy and the girl meet together without the knowledge of the parents?

A. If marriages have taken place and both the parties are minor I think the responsibility must rest with the parents, because the boy and the girl know nothing. Parents are responsible for their boys; they must take care that such a thing does not happen.

Q. Supposing the boy is a major and this offence takes place, what punishment would you give to the boy?

A. Heavy fine.

Q. Who is to pay that fine; the boy is not in a position to pay it. Don't you think the parents will have to pay the fine?

A. I do not think heavier punishment should be given because it will spoil the life of the couple.

Q. If the fine is not paid, would you prescribe imprisonment?

A. I cannot say that; I am not a lawyer.

Q. Why do you want these marriages to be registered? What is your purpose in putting forward this suggestion?

A. When marriages take place at a young age the parents of the parties contracting the marriages should be responsible for executing a bond for keeping the boy and girl separate. In case of breach if any action is to be taken parents should be responsible and the children ought not to be sacrificed.

Q. Taking it for granted that there is no marriage law, then you would have registration of marriages and if there is a marriage law then it is not necessary?

A. If the age of the girl is 16 at the time of marriage then bonds should be taken for the rest of the period. If marriage legislation is fixed at 14 then the marriages should be registered and bonds taken till the girl is 16.

Q. Would you like to have these cases tried by a matrimonial court?

A. Yes, all these cases should be tried in camera.

Q. I am speaking of a new court without magistrates?

A. Whatever that may be the cases should be heard in camera.

Q. Would you like to have it purely by non-officials or by a magistrate?

A. I would have anybody who is interested in the progress of social reform.

Q. You have said that the right of complaint should be given to women's association. Would you limit it to women's association?

A. No.

Q. Would you give the right of complaint to the general public?

A. My difficulty is that there are very few people who will really care to come forward and give evidence in such cases. Personally I would feel difficult to do it.

Q. How would you get over the difficulty that such cases do not come to light?

A. It has been a problem with me all these days; I have been thinking over it.

Q. Do you think we should wink at it though we have it on the statute book?

A. No, then it will be useless.

Q. Supposing a check is placed that preliminary sanction may be given by a magistrate before the actual trial takes place that is the magistrate should satisfy himself before he gives such sanction and special women magistrates are appointed for the purpose. Would this work?

A. I do not think it would be in the interest of those who want the law, I myself would not be satisfied.



Q. May I sum up the position. You are keen on marriage law and if marriage law is not passed you are not keen on the Age of Consent Law?

A. After the minimum age of marriage is fixed the difficulty will have been solved.

Q. But if this law is not passed or if it is passed fixing a lower age of 13 or 14 you really do not believe in the Age of Consent Law and you are indifferent whether it is enacted or not.

A. I do want it because we can enlighten the public that such a law is in force and if you break it you will be liable to punishment. With that weapon in hand social reformers can proceed with work with better results.

Q. It will be a sort of Democles sword actually injuring nobody? Is it not?

A. Some cases will come to light.

Q. Would you like to have marital cases compounded?

A. Cases that will come to court will be cases which have already occurred after the action has taken place. So I do not know what good we can do. In the interests of the girl and the boy I would say that the thing should not happen.

Q. If such cases come to court, for the sake of peace in the family, would you like them to be compounded?

A. Yes, that would be the best thing.

Q. You spoke of bonds being taken from the parents at the time of marriage so that consummation may not take place below a certain age. Supposing it is broken parents will be fined but the act will continue. Would you check that act by any other means?

A. No.

Mr. Bhargava: Does Garbhadan ceremony in this part means necessarily consummation?

A. As soon as this ceremony is performed, consummation takes place.

Q. In reply to question 8 you say that this Garbhadan ceremony is performed before consummation. Therefore it coincides with consummation.

A. Ceremony must take place after puberty and consummation necessarily takes place after it.

Q. We have it on evidence that if the first child birth is after 20 or 21 the risk to a certain extent is greater because the elasticity of the organs is less? Is it so?

A. I do not think so. If they get the first child at 30 or 35, it may be so.

Q. You think if there is delivery at 18 or 19 there is no risk?

A. They do even deliver at 16 safely.

Q. When do you think physically a girl is fit to become a mother? You have put it 20 or 21 but is it not a fact that the elasticity of the organs diminishes?

A. Not before 30 or 35.

Q. If it is not possible to have a minimum age for marriage, do you recommend that there should be some law prohibiting unequal marriages—those cases where there is a great disparity in ages, e.g., fixing that a man of 40 or 50 should not marry a girl below 16?

A. If nothing is available I think that would be something.

Q. But widowers are the worst culprit as you say. Don't you think it would be useful?

A. Yes.

Q. You think that public opinion will also be more favourably inclined in fixing the minimum age for marriage?

A. Yes, that is in cities. I have no experience of villages.

*Maulvi Mohd. Yakub:* Have you any knowledge about the age of marriage among the Mussalmans?

A. No, I cannot say with authority.

Q. Have you had no occasion to attend a marriage among the Mohamedans?

A. Those which I attended were of grown-up girls.

Q. What was their age?

A. Between 16 and 20.

**Written Statement, dated the 30th August 1928, of Mr. D. G. DALVI, B.A., LL.B., on behalf of the Bombay Presidency Social Reform Association.**

1. Our Council is of opinion that there is a general feeling that the present law regarding the Age of Consent in India is not satisfactory and that the Age of Consent ought to be raised. When the limit was fixed at the age of 12 in 1891, Government had given an implied promise that it would be raised to 14 when a suitable opportunity came. Since then, social customs and opinions have undergone a rapid and radical change rendering a substantial increase of the Age of Consent imperative.

2. Some of the circumstances which in the opinion of our Council justify an advance in the present law are:—

- (1) From the physiological point of view, increasing the limit from 12 to 13 is of little consequence and it is therefore necessary to increase it still further.
- (2) Owing to the growing sentiment in favour of the higher education of women, an increasing number of grown-up girls remain unmarried upto a late age. Further, owing to the relaxation of purdah and removal of restraints on the freedom of movement in the case of women, larger number of grown-up girls move about freely in the public. The number of women employed in factories is on the increase. There is a general loosening of old restrictions at a comparatively more rapid pace than the advance of public opinion in matters relating to sexual and social purity. There is also a growing feeling against the obligatory rule of marriage. These circumstances have made it necessary to afford greater protection for the safety of young women and this situation is further accentuated by the impact of post-war laxity in morals on life and character through such agencies as cinemas and sensational novels and plays.

The nett result of these influences is, on the one hand, to decrease the old customary safeguards for the protection of the women and, on the other hand, to increase the opportunities for men with ill-assimilated ideas of social freedom to take advantage of the disappearance of such safeguards.

3. In the absence of reliable statistics, the Council feel that they are unable to give definite answer to this question. But the Council are aware of loud complaints in some part of the country about the growing evil of the abduction of young girls for different purposes.

As to the effect of the amendment of the law in 1925, our Council are of opinion that sufficient time has not elapsed since then to enable it to form an accurate estimate of its preventive effect.

4. As stated above, the amendment of 1925 has been in force only for a short time and our Council do not think that it would have had any material effect in any of the three directions suggested in the question. But several influences including the discussions in the Press and on the Platform on the question of women's rights and liberties and the women's movement which has been rapidly growing in strength and volume have tended to advance

both opinion and practice in these directions. The one step which the Legislature can take to make these forces more effective is to discountenance child marriage with an ultimate view to its prohibition.

5. Fourteen is perhaps the usual age at which girls attain puberty in most parts of India. It is probably not a question of castes and communities. The most recent opinion as regards age and sex distribution inclines to assign them to territorial rather than to caste or communal peculiarities. Our Council, however, are of opinion that puberty is perhaps as much a psychological as a physiological incident. Puberty appears earlier in girls brought up in the old way, namely, without education and with the constant thought of marriage as their sole purpose in life than in educated surroundings and with intellectual and social interests and with a broader outlook on life.

6. According to the Indian Census Report the custom of child marriage, i.e., marriage before the age of ten is most prevalent in Bihar and Orissa, Bombay, Baroda, the Central Indian tract and Hyderabad. Even in these areas cohabitation before puberty is, in the opinion of our Council, not common as public opinion will not countenance it. It is usually after puberty and, as 14 is the average age, it is improbable that there are many cases of consummation before the girl completes 14 years. Such cases of pre-puberty consummation that occur are most likely among ill-assorted couples when adult men marry girls of tender age. There is a growing feeling against such marriages also.

These cases seldom come before the Courts for the simple reason that the conviction of the husband places the girl in an intolerable position both from the economic and social points of view. She cannot remarry, and she is likely to be looked upon by her husband's relatives as a sort of social traitor.

7. Our Council do not believe that early consummation of marriage is due to any religious injunctions. Wherever it prevails it is based upon local custom. The question of Sastric authority in social reform is no longer a live issue as it was 30 years ago. In fact, religion has become only a pretext nowadays for justifying irrational customs.

8. Our Council believe that the Garbhadan ceremony, is performed in recent time in some communities only but not as conspicuously as it used to be. Where it is still looked upon as essential, being one of the sixteen Sanskars enjoined upon a higher class Hindu, it is necessarily performed after puberty and the interval varies according to the circumstances in which the married couple stand at the time.

9. Whether puberty is sufficient indication of physical maturity is a question for physiologists to answer. Our Council are, however, strongly of opinion that not only physical but mental maturity also is essential for a girl to give a valid consent to sexual intercourse whether in or out of marriage. A mere physical consent for such a serious matter cannot be regarded as a deliberate and valid consent.

Our Council are therefore of opinion that, having regard to prevailing custom and sentiment, 15 should be deemed to be the minimum age for consummation of marriage for girls, though they are inclined to believe that if the health of the girl and her progeny is the only consideration, the age limit should be still higher.

10. As stated in answer to question No. 9, the question is one of not only physical but mental maturity. Our Council should be inclined to think that not many Indian girls are competent to give an intelligent consent under 18 years of age. Up to this age they are regarded as minors for all civil purposes and our Council think that they are and should be regarded as minors incapable of giving valid consent to sexual intercourse.

11. This is primarily a question for medical experts to answer. Our Council, however, may state generally that several cases of child marriage have occurred in recent time which are attended with the unfortunate result of too early and too frequent maternity.

12. Our Council are of opinion that the evil results suggested in this question are prevalent especially in big cities.

13. Our Council think, public opinion to-day, will support the increase of the Age of Consent to 18 if the marriage relation is excluded from the purview of the section dealing with rape. Such support will not be confined only to certain classes but will be general.

14. Our Council believe that women in our part of the country do not favour early consummation of marriage for their children. On the contrary, educated opinion among women even of the conservative type is now against early consummation.

15. In the opinion of our Council the difficulties in determining the age of girls are considerably minimised in big cities where accurate vital statistics are available. In Bombay City the system of registration of births is a great help in this direction. Besides, the certificates for vaccination and from primary schools provide additional materials for this purpose. These difficulties are more experienced in the mofussil where these facilities are not adequate.

16. Our Council do not think that absolute certainty as to age can be obtained under the limit of 18 for girls. At the same time, they are of opinion that the difficulty of determining age would be appreciably reduced with every year above 14 to which the Age of Consent is raised.

17—18. Our Council are strongly of opinion that extra-marital and marital offences should be distinct and placed in different categories. As stated above, our Council would strongly urge that, in the case of strangers, the age-limit of the girl should be not less than 18 and the present punishment should not be reduced. Our Council believe that public opinion would support this improvement in the law.

When dealing with the case of the husband, our Council think that different considerations ought to prevail. They think that the age-limit for the wife in this case should be 15 and strenuous efforts should be made for preventing marriage of the girl below this age-limit.

Our Council cannot ignore the difficulty of enforcing a provision of law in which the Age of Consent is higher than the age of marriage. Our Council may, however, point out that according to the report of the Select Committee on Sarda's Marriage Bill, 14 is the limit below which marriage is penalised by law. Our Council is also conscious of the popular view that the Legislature ought not to penalise consummation after the marriage is celebrated. For these reasons the marital offences should be placed in a different category from that of rape and, if practicable, special provision of law may be made for this purpose and, in order to conciliate public opinion, lighter punishment may be provided for this offence. The proposal to punish it with 2 years' imprisonment may be favourably considered and alternative punishments may also be devised.

As regards the procedure of trials our Council do not think that any change in the present law is needed for differentiating between these offences.

19. Our Council do not propose to answer this question.

20. Our Council do not consider that, in respect of marital cases higher Age of Consent and minimum age of marriage constitute alternative remedies, as they are interrelated and act and react upon each other. As already observed, public opinion would not tolerate a great diversion between the age of marriage and the Age of Consent if both are fixed by law. Further, higher Age of Consent without corresponding increase of the minimum age of marriage would be futile, as offences against the law pertaining to consent would scarcely come before a Court of law. Hence the more effective line of attack would be to raise the minimum age of marriage. But as there are far greater difficulties in the way of raising the minimum age of marriage as contrasted with fixing the higher Age of Consent, our Council think that the easier remedy of increasing the Age of Consent should be availed of, while making every effort to raise the minimum age of marriage so as to approximate it to the Age of Consent. Our Council are of opinion that public opinion would support measures for increasing both the age of mar-

riage and of consent if a short interval only is allowed to intervene between the two.

21. The progress of social reform by means of education and propaganda is of course our main line of attack but our Council think that well-considered social legislation is essential to consolidate our gains and to prevent a relapse. The slowness in passing such legislation has been a serious handicap to social reformers.

### Oral Evidence of Mr. D. G. DALVI on behalf of the Bombay Presidency Social Reform Association.

(Bombay, 30th October 1928.)

*Chairman:* I understand you are one of the secretaries of the Bombay Social Reform Association.

A. Yes.

Q. Are you connected with any other social reform movement also?

A. I have been the Assistant Secretary of the National Social Conference for about 12 years. We used to organize National Social Conference at the end of each year and at all the local conferences we have passed resolutions for a higher Age of Consent. It is now 20 years since we have been passing resolutions year after year and sending them to proper authorities.

Q. And about the law regarding marriages have you also been passing resolutions?

A. No. Only we were passing resolutions against infant marriages and proposing that marriages up to a certain age should not be allowed, but we did not ask for any legislation.

Q. What was the age that you passed?

A. 18 to 21 for boys and 14 to 18 for girls. The ages have varied from year to year, but that was the general trend of the resolutions.

Q. You seem to think that the raising of the Age of Consent being the easier remedy should be availed of while at the same time efforts should be made to raise the minimum age of marriage so as to approximate it to the Age of Consent. By the latter portion do you mean legislation or otherwise?

A. What I mean is that in the first instance the age of marriage ought to be raised but as that is, in my opinion, a more difficult thing than raising the Age of Consent. I would suggest that the Age of Consent should be raised. But if we raise it too much above the age of marriage it will be difficult to enforce it. Therefore the Age of Consent and the age of marriage must be made to approximate and therefore my Association has recommended 15 for marital cases and 18 for extra-marital cases. We base 15 on the supposition that Sarda's Bill as amended by the Select Committee, *i.e.*, the age for marriage fixed at 14 for girls and 18 for boys, will be passed. That was the trend of the discussion at our Council meeting. We say having regard to the sentiments prevailing among the people 15 should be the minimum age but if the health of the girl and her progeny requires it it ought to be more. We make concessions to public sentiment and social feeling and make it one year less than 16.

Q. You call the Age of Consent an easier remedy and you say it should therefore be availed of, while efforts should be made to raise the age of marriage so as to approximate it to the Age of Consent. Is this to be by legislation or the first part by legislation and the second part by propaganda?

A. Both by legislation. But I will explain what I mean by "easier". As regards the fixing the age of marriage I can say that so far as Hindu idea is concerned it is very difficult to do on account of various reasons. For instance some may plead that it is against the Shastras, some may plead it is against the social custom, tribal custom and local custom. So many say that when I get a suitable husband I will have to marry the girl otherwise

I may lose the chance. In other cases the parents may be old and want to see the girl married and settled in life. These difficulties are minimised in the case of Age of Consent. But we know that after marriage the husband gets a certain right over the wife and if that right is given to him the law should intervene, and to postpone the enforcement of that right by putting off the Age of Consent is also another difficulty in the way of legislation. Taking all these into account our association thinks that the first line of attack should be raising the age of marriage and the second line should be the Age of Consent. If at any rate the age of marriage is difficult, raise the Age of Consent.

Q. Would you raise the Age of Consent to 15 or 16?

A. 15 in marital cases and 18 in extra-marital cases.

Q. How long has this Reform Association been in existence?

A. It was started in 1901.

Q. Can you suggest any means by which marriages may be permissible at any age and yet the law of the Age of Consent raised to 14 or 15 may be effective?

A. I cannot suggest anything.

Q. There is very strong orthodox view on one side and there is almost clear necessity from the point of view of medical authorities. Is there any way of reconciling these two?

A. That cannot be done so much by legislation as by propaganda.

Q. Supposing the law of Age of Consent existed by itself, can we make it more effective than it is at present?

A. There is no other remedy except deterrent punishment.

Q. An important argument has been put forward in the matter of punishments by some people including ladies who are most concerned. They think that the life of the girl will be ruined if there is a heavy punishment and have suggested a lenient punishment instead of deterrent punishment; which do you want?

A. 2 years is quite enough.

Q. Would that make it effective in getting consummation of marriages postponed till the given age?

A. Yes, provided there is a machinery for bringing the lapses before the courts.

Q. What is that machinery?

A. It is possible to devise local committees by Government with certain powers of reporting to the proper authorities.

Q. What should we do in villages?

A. The difficulty is that such powers are likely to be misused in villages by one section against another. Hence I would give the power of making complaints to certain parties only and the cognizance to be taken by certain police officer and trial by certain magistrates.

Q. You have suggested three—the power of complaint, the power of investigation and the power of trial. Whom would you give the power of complaint?

A. As a member of the Bombay Corporation we have suggested that it should be given to the relations and guardians of the girl. As a member of the Committee who drafted that memorandum I was opposed to it because I thought to restrict it in that manner would be to make the whole thing nugatory, and secondly I do not know how we can circumvent the power of complaint.

Q. But you might empower certain bodies especially those who might be interested in bringing these cases to light, can't you?

A. Apart from them you cannot otherwise restrict the power to certain kind of relations.

Q. Would you like, for instance, to invest ladies' associations with power to bring these cases to light?

A. We have got in Bombay the Vigilance Society which is an active body. In big towns there would not be any difficulty of giving this power in the first instance to certain constituted bodies but in rural areas I am afraid at present I cannot advise any machinery to whom this power can be safely entrusted.

Q. Who is to investigate these cases?

A. I would not allow the police to be on the scene.

Q. Would you make it non-cognizable between 12 and 16? What is your machinery for investigation?

A. The complainant should produce the necessary evidence but if we are at all bringing in the police as an auxiliary the officer must be above a certain standard.

Q. Would you consider the Inspector of Police sufficient?

A. In Bombay City I would have the Superintendent of Police of wards and in the mofussil Inspector of Police.

Q. What machinery do you suggest for trials?

A. We have suggested that it should be Presidency Magistrate in the cities and first class magistrates outside.

Q. Do you think there is any likelihood of more cases coming to light if we have matrimonial courts for instance?

A. Matrimonial courts can only try when cases are brought before them. As regards the matrimonial courts—the only court of which we have experience in Bombay is the Parsi Matrimonial Court which is like a juvenile court. It will be very difficult to constitute special courts for this kind of work. I suggest that in the big cities there should be Chief Magistrate and no other and in the district, the District Magistrate should deal with these cases and no other because these cases are bound to be rare and a District Magistrate can try them.

Q. Don't you think that this motive for not bringing cases to light namely the scandal concerned of the likelihood of a son-in-law going to jail would remain even if we raise the Age of Consent to 16?

A. I think the force of public opinion now would assert itself so that more cases will come to light than before, because women's reform movement is considerably advancing and if there is law there would be women's associations to see that these lapses are brought to light.

Q. Do you think the present law of the Age of Consent was known?

A. No propaganda work was done by any association in the country including ours for this increased age but the increase was so small that nobody thought worth his while to waste his power.

Q. If it is raised to 15 or 16, will people think it worthwhile?

A. Yes. That will be something worthy of propaganda.

Dr. Beadon: You have said in answer to question No. 11 "Our Council however may state generally that several cases of child marriage have occurred in recent time which are attended with the unfortunate result of too early and too frequent maternity". Would you tell us any cases known to yourself in which there have been bad results?

A. I can recall to my memory several cases at this moment but I wish to make a general statement. It has come to my notice especially during the last 10 years that girls are leading married life at home and yet going to college and getting children. They die after the first or second confinement.

Q. What is usually the age of these girls?

A. 14 or 15. The double strain is the cause of this result.

Q. Have you known any cases in which the woman has only one strain namely of maternity?

A. I have not been living in Bombay and I cannot recall such cases.

Q. Are the girls in these cases very young?

A. The age of marriage has advanced so much in the last 25 years that marriage before 15 or 16 is unthinkable. I think only 5 per cent. get married early.

Q. Does consummation take place early?

A. That depends on the family. If the girl is in school and the boy is in school and the parents are intelligent they defer consummation until the period of education is over. It is only among the more backward communities that consummation and marriage take place simultaneously. It is more among the Gujrati and Marwari communities than among the Deccani community in Bombay.

Q. Have you seen early motherhood among these backward communities?

A. Yes, in several cases. Anaemia is general after the first child birth.

Q. Is tuberculosis common?

A. I cannot give you the statistics but speaking from general impression I can say that tuberculosis sets in in some cases.

Q. After the first child birth?

A. Not necessarily, but after two or three deliveries.

Q. What about children in these cases?

A. Children generally are not healthy. It is in rare cases that the child is healthy all the same but generally they are a continuous source of illness.

Q. We are told that if the marriage age is raised high there is a danger of immorality. In your community the age is high—do you find anything of the kind?

A. In our community marriage age has been gradually rising for the last 25 years.

Q. How long has it been, 15 or 16?

A. For the last 10 years.

Q. What is the marriage age of boys?

A. 20, 21 and upwards.

Q. Do you say there is no danger of immorality if the age is raised?

A. I do not believe it. There is this prejudice because there is free movement of sexes.

Q. Is it a fact that this freedom among the sexes leads to immorality?

A. No.

Mrs. Nehru: In para. 2 you say 'These circumstances have made it necessary to afford greater protection for the safety of young women and this situation is further accentuated by the impact of post-war laxity in morals on life and character through such agencies as cinemas and sensational novels and plays'. Have you personally noticed any examples of this?

A. The general impression is that these sensational cinemas and plays have an undesirable effect on the mind. Therefore there is some likelihood of the danger to the safety of young girls than before.

Q. But these cinemas have been in existence for a long time. I want to know whether from your personal experience you can say that such effect has been produced.

A. It is only a general idea. This particular sentence was put in by Mr. Natranjan but I can say that it is in the sense that there is a general feeling of evil effect of these sensational cinemas on the young mind.

Q. In answer to para. 3 you say 'But the Council are aware of loud complaints in some part of the country about the growing evil of the abduction of young girls for different purposes'. What are these different purposes?



A. Some are caste but generally Hindu-Mohamedan feeling. In some cases there is abduction by missionaries for the sake of conversion. Sometimes girls are brought from outside for brothels and they are clapped in.

Q. Are they sold from one man to the other?

A. They are purchased from outside and put in the brothels.

Q. Do people buy girls for private purposes?

A. That is not so. The agents of brothels purchase them outside and put them here.

Q. Have you any idea from which class and of what age generally these girls are who are brought here for sale?

A. Generally they are 13 to 14 years, but I cannot speak from personal knowledge; I am only giving the facts as I have got them from the secretary of the Vigilance Society.

Q. In para. 4 you say the one step which the Legislature can take to make these forces more effective is to discountenance child marriage with an ultimate view to its prohibition. What are those steps which you want the legislature to take for its discountenance?

A. One would be the Age of Consent. If there is no consent law what is the good of getting girls married early, i.e., prohibition of child marriages.

Q. Do child marriages take place in large numbers?

A. They are not large number but they do occur occasionally and especially in the mofussil but this practice is gradually getting discredited.

Q. You say that there is a growing feeling against such marriages. I want to know whether that growing feeling has any effect in practice or whether it is only a pious wish?

A. The feeling is not so keen so far as to affect the practice.

Q. In para. 8 you say that goana is not as conspicuous as it used to be. May I know why it is so?

A. Garbhadan or goana is a sanskar and this sanskar is getting less and less. Sometimes the gentleman does not want it. They do not want much publicity about it now so it is not so conspicuous as it was before.

Q. That is only about the performance of ceremony; but does the interval that used to be between the marriage and the consummation of marriage still continue?

A. Interval varies according to circumstances in which the married couple stand at the time of marriage.

Q. I want to know whether age is a circumstance to be considered?

A. Yes.

Q. That is to say, if the girl is young is it postponed?

A. Yes, that depends on the intelligence, culture and taste of the parents on either side and secondly if the girl is at school or the boy is at college they say let them complete their course before consummation takes place.

Q. You are against giving the power of complaint to women's associations because of the fear of their misusing it?

A. I am not against the women's association; I was against giving it to the public at large. I am in favour of giving the power of complaint to recognised societies of ladies.

Q. Recognised by whom?

A. I would not say by the Government. These should be just as you have got temperance advisory bodies; we may have advisory bodies but in this case with certain powers.

Q. Will your association take up this work?

A. Yes; we will appoint a permanent sub-committee for this purpose.

*Q.* As regards the trials, do you think it will be better if along with Presidency Magistrate lady assessors are appointed? Would you approve of it?

*A.* Yes, they would improve matters.

*Q.* Would you make the punishment 2 years or fine or both or bonds?

*A.* 2 years or fine according to the circumstances of the case. Mere bonds will not do unless there is further punishment.

*Q.* Bonds may be taken on the first offence?

*A.* My point is that punishment must be prescribed so that it may be considered as an example in the community in which such a case occurs.

*Q.* If you want to make it an example then very few cases are likely to come to light and then the girl for whose sake you are going to do this will be ruined. Even the sacrifice of one girl is a price too much to pay for the uncertain advantage which you may gain for the good of the others. Is it not?

*A.* If there is a machinery for more cases coming before the courts you need not have deterrent punishment.

*Q.* Would you like to have the alternative of bonds being taken?

*A.* Yes, the magistrate will judge what punishment should be given in each case.

*Q.* In answer to question 20 you say that our Council are of opinion that public opinion would support measures for increasing both the age of marriage and of consent if a short interval only is allowed to intervene between the two. What is the highest short interval that you would recommend?

*A.* One year.

*Q.* Don't you think 16 years as Age of Consent will be possible to work?

*A.* It will be possible but the difference should not be less than one year. It can with advantage be more but the higher the age-limit the more difficult it will be to enforce the law.

*Mr. Mudaliyar:* You have suggested 15 as the age of consummation. I take it that is in the hope that 14 would be fixed as the age for marriage. If it becomes impossible to have any legislation about the age of marriage, what is the Age of Consent that you would suggest?

*A.* You will see in the answer that we have made it clear that the Council believes that 15 is the minimum age that should be fixed and that if the health of the girl and her progeny is the only consideration the age should be still higher.

*Q.* You think that there ought to be as little difference as possible between the age of marriage and the Age of Consent, and because the age of marriage, as very probably it would be, may be fixed at 14 you think the Age of Consent should be fixed at 15. You think that beyond 15 it would be less workable than at 15. What is your opinion if no age of marriage were fixed at all? Would you lower the Age of Consent to 14?

*A.* No.

*Q.* May I take it that this age of 15 is an absolute figure irrespective of any law of marriage?

*A.* Yes.

*Q.* With reference to the punishment, you have said that the proposal to punish the offence with 2 years' imprisonment may be favourably considered and alternative punishments may also be provided. What alternative punishments do you suggest?

*A.* Our association not being a legal body did not think it necessary to go into this aspect of the question more carefully. Being a lawyer myself I am not refusing to bear the burden of the question. My idea is this. This offence should be put in a different category from rape and the punishment should be less than rape. The proposal of 2 years might be taken into consideration.

Q. You say alternative punishments may be devised. By that do you suggest a bare fine and no imprisonment whatsoever.

A. I am against that.

Q. Therefore you desire that provision for imprisonment should also be made. Should it be imprisonment or fine or both?

A. I made the suggestion of bonds under certain circumstances. If we find that a large number of cases are coming to light and deterrent punishment is not required then the punishment may be less.

Q. Supposing the age was fixed at 15, technically if the girl is even 2 months less than 15 the man would be punished. Would you therefore suggest that the punishment should be according to the age or the injury received?

A. If a large number of complaints come in then the punishment need not be great.

Q. But other considerations would intervene. It would be very difficult to determine whether the law is effective. You will have to get reports from cities and rural areas and so on. Would you therefore have it according to the nature of the injury, physical, mental or moral?

A. That will be one factor in determining the punishment.

Q. Would you be in favour of trials in camera?

A. Yes.

Q. Would you make these cases compoundable?

A. I have not considered this point, but I think to make it compoundable in every case would be to lose the very object of the law.

Q. Then would you have compounding with the sanction of the Court?

A. I would not be in favour of compounding. Let the magistrate give as light punishment as he can.

Q. You have suggested that ladies' associations might be authorised to file complaints in such cases. Knowing that public opinion is against making examples of these cases by bringing them into courts, do you think even social reform associations through their executive committees and standing committees would function properly?

A. Why not?

Q. Would it not be a case of the rich and the delinquents playing against the poor and the ignorant?

A. That will depend upon the personnel of these associations.

Q. Social reform associations are bound to be composed of richer and the fairly middle class people. Their sympathies will be towards their own class. They will be very active with reference to the illiterate classes and will try to wink at cases among their own class. Is that not an unfair position?

A. No. The members would be very keen about reform and they would first bring out cases of their own class.

Q. I am very glad to hear that. Do you think that the women's associations would also be in the same position?

A. The women of Bombay would be.

Q. There may be cases in their own families.

A. Somebody else will bring them out.

Q. In the course of your answer to question No. 21 you say, well-considered social legislation is essential to consolidate our gains and to prevent a relapse. Will you kindly explain what do you mean by relapse here?

A. We are referring to the Age of Consent. We should prepare the country by meetings and all kinds of propaganda work. Suppose we work the country up to the level of 15 or 16 and stop there and have no legislation, the temperature may fall down and the people may relapse and go back to the older ideas and counter demonstrations may take place. If the public opinion has been worked up to a certain age, let those ideas be incorporated into law so that there may be no occasion to go back.

Q. Do you belong to the Saraswat community?

A. Yes.

Q. In your community marriages take place late.

A. Yes.

Q. So that practically there is no danger of relapse in your community.

A. Well, I can't say. As things stand at present there is no danger of relapse. Educational, social, and economic forces are all operating to keep the marriageable age high.

Q. If all these forces are working in that direction, don't you think that if once the community is educated to that point there is no need of props to keep them up to that level?

A. May I appeal to history here. You are aware in Indian history there was a period when all marriages among Hindus were celebrated at an advanced age. You know that Sita and Savitri were married very late.

Q. That is mythology.

A. Why do you call it mythology, it is all history. After two thousand years we have again gone back.

Q. Would you have any special courts like the matrimonial courts to try these cases?

A. I am afraid, they won't do.

Mr. Mitra: You fix the Age of Consent in marital cases at 15 as a step only and you think the age-limit should be still higher.

A. Yes.

Q. Don't you think that frequent changes in this law may cause some resentment and would you not like that one big jump may be made and the age fixed at the limit we want?

A. I think by enacting the law now we would be providing for 20 years in advance. When the Age of Consent was fixed at 13 it was much below the mark and there was agitation. If we fix it at 15 or 16 there would not be agitation for 15 or 20 years. But I would prefer 16. We think 15 should be the minimum age but having regard to the health of the girl and her progeny if it is necessary, we may have a higher age.

Q. As regards the marriage law, what, do you think, should be the punishment for its breach? Should it be a fine or imprisonment?

A. I have not considered the point.

Q. Perhaps you know that there is some agitation amongst the orthodox people against fixing the age of marriage. Is it common here also?

A. There have been numerous meetings in Bombay about Sarda's Bill.

Q. Supporting it or opposing it?

A. Many more supporting it than opposing it. Our association was perhaps the first to send a long representation to the Government of India in connection with that Bill, and many of the suggestions have been copied in the Select Committee Report.

Q. Have you any experience about the villages?

A. I don't think we can speak with great knowledge of the mofussal. Our profession brings us in touch with the rural areas.

Q. Do you think there will be any agitation in the rural areas if the law is passed?

A. I think it will be accepted in the mofussal. In the rural areas it all depends how the case is put before them and who puts it. It is wrong to say that people are against such and such thing in the villages. They can be induced to accept any reasonable change in the law.

Q. Can you tell us from your experience what is the system of registration of births in rural areas?

A. It is very unsatisfactory. The village patel is supposed to record births. The register is very unreliable. The certificates of the primary schools are more reliable.

Q. What about the cities?

A. I can speak with knowledge about Bombay. Here the registration of births is very satisfactory.

Q. Is there any law punishing failure to report a birth?

A. There is.

Q. Is there any law in the mofussal also?

A. I don't think. But I am not sure about it. I don't know if there is any penalty provided for in the District Board or Local Board Act. I don't think there is any provision.

Q. You suggest it should be incumbent on the village officials, the primary school teacher and then the vaccinator to give the exact date of birth.

A. Yes.

*Moulvi Muhammad Yakub*: Don't you think that legislation in domestic matters, specially by a foreign government is not desirable?

A. I don't think so. As things stand at present any legislation that would be passed will be passed by the Legislative Assembly or the local Councils which consist of three-fourth elected members. No legislation passed by these bodies can be said to be an interference by a foreign government.

Q. Don't you think that any legislation passed by anybody which interferes with the domestic life and restricts individual liberties is undesirable?

A. After all what are our shastras and smirities. They are the opinions of the great *Rishies* which were held binding upon Hindu families. That was a most decided interference. But in order to make these injunctions effective, religious aspect was given to it.

Q. Have you got any respect for the religious feelings of the people of this country?

A. Certainly.

Q. Probably you know, leaving aside Bombay, that there is an overwhelming majority of the Hindus, specially in Madras, and the Musalmans as well, who consider any legislation fixing the age of marriage an interference in their religion. Do you think that feelings like that should not be respected by Government?

A. I think the first proposition is not strictly accurate. We have not taken any referendum of the people. If we take a referendum in the proper way I am sure that the answer will not be as assumed by your first question.

Q. You think that the majority of the people literate and illiterate throughout the country is in favour of legislation on the lines of Sarda's Bill?

A. I have not given thought which is necessary to that question. But I think if it is placed before them in that proper light, I have no doubt that they will accept it as desirable.

Q. You say that among other things economic considerations force the parents to marry their girls at a later age. Some of the witnesses have said that it is on account of the economic pressure that some of our poor people we cannot support their girls for a long time give them in marriage at an early date when they are very young.

A. That is true of some communities. In some communities there obtains what is called the bride price. The girls are sold and the earlier you sell the more money you get.

Q. It is not only on account of the "bride price" but they cannot afford to support their girls for a long time and for that reason they dispose the girls as soon as possible.

A. That is true in some cases.

Q. You say drastic punishment in the case of breach of the law of Age of Consent would be helpful in bringing cases to light. We are told it is just the contrary. On account of the fear of punishment and the drastic measures that could be taken against the accused, the relations, the people of the village, the neighbours, do not come to the court. It has been suggested that the punishment should be very light in order to encourage the people to bring these cases to court.

A. I have modified my answer to the effect that in case there is machinery for bringing to light more cases the punishment need not be deterrent.

Q. You propose that the right of complaint should be widened because if there are restrictions the cases will not come to light and you propose that the right of complaint should be given to vigilant societies and such other bodies as may be constituted for the purpose.

Q. Do you think that such a proposal can be practical in a vast country like India where most people are uneducated and where people in villages know nothing about panchayats and organizations?

A. We have district boards, local boards or taluka boards and if that machinery is really worked properly every man and every village can be touched by that machinery.

Q. You want these offences to be made cognizable.

A. No. Above 12, as now, they should be non-cognizable.

Q. Are you in favour of punishing the parents also in the case of a marital offence? You know the family conditions in India. If the parents really take care that the boy and the girls should not be united together consummation can never take place. The guilty party, therefore, is really the parents who bring about such environments which lead to the commission of the offence.

A. I think every section of the Indian Penal Code is open to have an abetment section attached to it. The parents will come in as abettors.

Q. In extra-marital cases you want the age to be raised to 18.

A. Yes. My reason is that according to the Law of Majority a girl becomes a major when she is 18 and here also the age must be the same.

Q. Don't you think that if the age is raised to 18, there is a danger of the girls of the age of 17 or 18 inducing young boys of tender age to have relations with them?

A. These cases are so rare that I would not contemplate them.

Q. In any case you do not want to give any punishment to the girl whatever her conduct.

A. I will leave the girl alone in such cases.

Q. May I know what are your reasons for that?

A. The reason is that speaking generally, the girl is often much less to blame than the boy.

Mr. Bhargava: Is it your considered opinion that in a case just mentioned by my friend the girl will not be regarded as an abettor? Under the law even to-day she would and she can be punished as an abettor.

A. Under the present law she is not considered to be an abettor.

Q. She is. Suppose there is a girl of 17 and the boy is 16 and the Age of Consent is raised to 18 and the girl consents she can be punished as an abettor.

A. Who will be the complainant?

Q. The boy will be the complainant. In a proper case, therefore, even to-day the girl can be punished. You of course don't want to change the law.

A. I have not considered this aspect of the question and therefore I am not able to dogmatise on this question of law.

Q. Do I understand you don't want to change the law?

A. I would not.

*Q.* In the course of your answer to question No. 2 you say there is a general loosening of old restrictions at a comparatively more rapid pace than the advance of public opinion in matters relating to sexual and social purity. There is also a growing feeling against the obligatory rule of marriage. Will you kindly explain this?

*A.* I will explain the last sentence first. There is a section among our community which believes that it is not obligatory that every girl must be married. There is a feeling that these Bhatie Bhikshinies and sisters can remain unmarried. That means that they require further protection and an advance is necessary. By the first sentence I mean.....

*Q.* I understand the first sentence. Is it a fact that consummation used to take place late in life formerly and now it takes place earlier?

*A.* That does not refer to consummation. I mean that there is more freedom and there are increased facilities for intercourse between the two sexes. In the old days the girls used to remain in the house and did not go out.

*Q.* Do you mean there is a loosening of the Parda, etc.?

*A.* If you go out once in the evening to Chaupati, you will understand what I mean. There is a free movement of the two sexes and there are greater risks and dangers to the safety of the girl than in earlier days when so many safeguards were there.

*Moulvi Muhammad Yakub:* Do you mean that Western civilization is more responsible for this?

*A.* I won't put it that way. New forces, domestic, social and others require more protection for the girl.

*Mr. Bhargava:* Is it a fact that 15 years before consummation took place at a later age than at present? There was Goana or Garbhadan ceremony and the parents took care that the couple came into contact with each other at an advanced age than at present.

*A.* That is not our experience on this side of the country. To-day certainly the age is higher than before excepting the very backward communities.

*Q.* What is the difference between the age of the boy and the girl when they are married in the backward communities?

*A.* In the case of backward communities generally the girl is 8 or 9 or 10 and the boy is 13 or 14. There is four or five years' difference. But they do not mind even if the boy is younger than the girl.

*Q.* In these communities the first meeting has no meaning.

*A.* I think so.

*Q.* And therefore in the majority of cases consummation is not the necessary result of marriage. It may not take place for the coming two or three years.

*A.* That is more than I can say.

*Q.* Then you have suggested village panchayats and such other bodies. May I know, from your experience of the rural areas whether it will be possible to have such societies as the Bombay Vigilance Association or such other association for the next 20 to 50 years?

*A.* In the district towns it will be possible and with them moves the life of the rural areas. In the district headquarters there will be a committee of this sort and it will have sub-committees. There will be one taluka town and under its control will be a certain number of villages. They will keep in touch with one another and get information from the different villages.

*Q.* Are there any Rural Community Councils in Bombay?

*A.* We are now having village panchayats. We have got taluka boards.

*Q.* Are you in favour of giving this power to the sub-committees of the municipal boards and district boards?

*A.* I can't give you more detailed information on the point. I can't say what the lines of investigation, etc., should be.

Q. Do you think that even if this law is passed there will be very few marital cases that will come to court?

A. That depends upon the machinery for bringing them to light.

Q. Supposing you have got societies in every village as you suggest. Even after the case comes to the court the evidence of the wife and her relations is the most important thing. The evidence of the wife and the parents will be against the prosecution and it will be very difficult to prove sexual intercourse itself between 14 and 18. Do you realize this?

A. I do. It will not be very difficult to obtain evidence. There are the servants or the neighbours.

Q. Do you think that the evidence of the servant in such a case will be regarded as conclusive? The parents are the abettors, the husband is the accused and the wife is not willing to give evidence, do you think that the evidence of the servant will be regarded as sufficient evidence? There will be no medical evidence also because between 14 and 18 there will be no case of injury.

A. There may be no injury but there will be evidence to show whether there was cohabitation or not.

Q. Do you think that if a case is brought after 15 days—and in your scheme of things the case will be non-cognizable—and the age of the girl is over 15, the doctor will be able to say after examining the girl whether there was cohabitation or not?

A. I think not. In the case of a virgin it may be possible.

Q. But in the case of extra-marital cases?

A. There will be difficulty.

Q. Do you know that the non-existence of the hymen is due to many causes?

A. I am not a medical man, and all I can say is that medical evidence can be had as much as can be relied upon.

Q. Supposing you allow the right of complaint to the general public as it is to-day and then barring the case of the girl herself and her parents, you propose that there will be an officer, district officer or some other officer, to whom all reports should go and he may sanction the prosecution in proper cases, would you like that?

A. If you introduce the sanction of an independent officer in the matter, I am afraid that would mean that he would have to take some evidence before he sanctions or disallows.

Q. I will tell you how to get evidence. The birth certificate of the child and the mother may be appended which will be sufficient evidence of age.

A. Don't you think that that will be duplicating the work.

Q. There will be no chance of persons wreaking vengeance against innocent persons.

A. Does not the law provide for false complaints even now?

Q. Do I understand that you are satisfied with the existing law?

A. I said that the right of complaint should be given to recognised bodies where they can be had in order that more interest may be taken than the general public is taking in the matter at present. The public is apathetic. Instead of people coming forward to make complaints the cases are hushed up. But when the age is raised the number of cases will increase and there is danger of people taking undue advantage of it. Therefore I would give the right of complaint to the associations wherever they can be had. These associations will be helpful in bringing cases to light.

Q. Under section 44, Criminal Procedure Code, there are certain offences where there is an obligation to report on every person who comes to know of any of them. Would you include this offence in that list?

A. I see no objection to it.



Q. In this way many offences will be brought to light. There are two ways of dealing with them. Either every offender should be punished or examples may be made of some cases and others may be left to take lesson from those examples. What would you like?

A. I am for punishing every relapse of law and not making examples of certain cases. When the cases are so rare to restrict the punishment to some cases and make that exemplary would be making the law ineffective.

Mr. Kanhaiya Lal: If the enquiry is conducted by higher officers of the police like the Deputy Superintendent only, would you make these offences cognizable?

A. No. In actual practice when these officers investigate they rely upon the statements made to them by the subordinate officers. Even if it is made obligatory they will continue to rely upon the junior officers and it makes all the difference if my jemadar tells me about something and the person tells me himself.

Q. You have said that up to 12 years the cases may be allowed to remain cognizable. Do you find that there have been cases of misuse of that authority?

A. So few cases have come to light that there is no scope for such enquiry.

Q. Don't you feel that if you make the cases cognizable only on the complaint of the girl and her parents and recognised associations, you will be narrowing down the sources of information?

A. My opinion is that the sources of information may be as wide as possible and that is why we differ from the proposal of the Bombay Corporation that the complainant should be only the girl or such persons as would have been her guardians if she were unmarried.

Q. But at the same time you exclude the police from taking cognizance?

A. This is for the purpose of preventing blackmailing or such other dangers.

Q. Would you be satisfied if in order to prevent blackmailing or prevent maliciously inclined persons from making a complaint, a preliminary enquiry is made by a magistrate in every case before he starts actual prosecution?

A. I have no objection to that. The point is that where the case is false why should anybody's reputation be unnecessarily injured and the domestic affairs brought out.

Q. If this preliminary enquiry is made compulsory to obviate the difficulty you have in view, would that meet your objection?

Q. If this preliminary enquiry is made compulsory to obviate the difficulty from an enquiry by the police.

Q. What objection have you got in having a matrimonial court?

A. In the first place the number of cases will be so few as not to justify the existence of such a court and secondly where it consists of a number of representatives of different communities one community is likely to suspect the other community.

Q. At present cases under 12 go to the Court of Sessions and the others go to the Magistrate. In order to avoid the prolongation of trials would it not be desirable to have a matrimonial court consisting of either a magistrate or a Sessions Judge with two non-officials to sit with him as co-judges for all marital cases.

A. Who will be the two non-officials?

Q. Some have suggested that they should be assessors and others think that they should be co-judges who should also take part in awarding the sentences.

A. I should like to have two ladies who should assess the guilt only. The reason is that in cases where certain domestic customs and manners are concerned they will be better than men. In the case of Muhammadans many of us do not know their customs.

Q. If we have one Hindu judge and the other Muhammadan judge to sit with the magistrate would not the same purpose be served?

A. But probably he will not be a legal man.

Q. There is the judge to guide the procedure.

A. I don't think in such cases I would trust two non-officials to find out the guilt of these people. I may trust the ladies as assessors.

Q. If ladies are not available you will have male assessors.

A. In that case make them mere assessors and nothing more. Their opinion will not be binding on the judge or the magistrate.

Q. In marital cases don't you think that it is desirable that in order to bring reapproachment between the husband and the wife the case may be allowed to be compounded with the sanction of the Court?

A. It should not be compoundable in the first instance. The parties should be separated for some time and bonds taken. If bonds are taken the girl can be sent to a rescue home and the boy can be sent to a reformatory. Their relations would continue alright but they would be separated.

Q. If we have a law fixing the age of marriage and the Age of Consent, would it not be desirable to have a system of registration of marriages or reports giving the names and ages of the marrying parties.

A. I have no objection.

Q. Suppose we have a system of registration of marriages who should be the authority to maintain these registers? Should it be the District Board, the Local Board or the executive authority?

A. I would prefer an executive authority to start with. As these facts have a legal value there is a danger of their being manipulated.

Q. Would you require that when these reports are made a free certificate should be issued to the reporting individual so that he may keep it for future use?

A. There is no objection to that.

Q. In the case of reports of births also would you like that a similar certificate should be issued to the reporting individual?

A. Yes. It will only mean some extra trouble to the municipal authorities. But these certificates will be useful in so many ways.

## Written Statements of persons not orally examined.

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Written Statement, dated the 2nd August 1928, of Mr. KRISHNALAL MOHANLAL JHAVERI, M.A., LL.B., Chief Judge, Court of Small Causes, Bombay.

1. Dissatisfaction is noticeable amongst educated and articulate classes. Those who are backward, uneducated and live in villages, and are not reached by the various social activities at present prevalent in the country and who form the largest number of the population are scarcely expected to feel dissatisfaction or otherwise with the state of the law.

2. (a) The law of the Age of Consent as administered till now has, if anything, worked well and served to prevent the evil, by opening the eyes at least of those related to or interested in the accused to the fact that such an act is punishable by law. On this ground alone, if not on any other, it should be retained, as it has a preventive effect.

(b) The ages of girls and boys, looking to the poor state of health enjoyed at present by them, should be raised. Various causes have contributed to the undermining of their health. Adequate legislative advance should therefore be made in the law.

3. No. The amendment of the law, so far as I know has neither improved nor spoiled matters.

4. I am not aware of any change in marital relations or putting off marriage or stimulation of public opinion due to the amendment. Wherever there has been an advance, it has been due to reasons independent of the law; such as, the parents being educated and enlightened and hence not liking to marry their daughters early, or where daughters are given in marriage from mercenary motives, bridegrooms with adequate price not coming forward till girls reach a higher age, or there being agitation either in the caste, town or village against a proposed early marriage, and the parents surrendering to such agitation or persuasion or in very rare cases, the girl herself objecting to be married early.

Education and propaganda work would make the law effective.

5. At the age of thirteen or fourteen. Yes, ages would differ, but not to any very appreciable extent. The difference may be a year, here or there. Well fed girls, girls of communities and classes well off, would attain puberty earlier than poorly fed girls and girls of poor parents. Similarly there would be some difference between girls living in villages and those living in towns and cities, due to their modes of life, climate, surrounding and like causes.

6. No. I do not know of any case having come to Court.

7. No. I attribute it to the belief of the husband that by marriage he is entitled to do anything he likes to his wife, consummation of marriage being one of such rights. He hardly cares to think whether what he does is due to religious injunction or not. His "idea" is that he marries to get children or enjoyment and the earlier he sets about it the better. The sex urge is there, all along, also. Only education can cure him of his thoughtlessness and disregard for the health of his wife.

8. There is no "Garbhadhana" ceremony in my part of the country, in the sense of a ceremony performed after menstruation, to ensure or facilitate conception. A ceremony corresponding to it is performed after the fifth month of pregnancy with a view to ensure healthy and proper development of the foetus. Before consummation, however, it is usual for the bridegroom's and bride's people to fix an auspicious date for the bride to go to her husband.



**Written Statement, dated the 7th August 1928, of Hon'ble Sir C. G. H. FAWCETT, Kt., I.C.S., Judge, High Court, Bombay.**

1. Yes. I think there clearly is such dissatisfaction, as it shown for instance by the debates on the subject in the Legislative Assembly and the Council of State and by resolutions passed at public meetings. on the subject, in recent years.

2. I am decidedly of opinion that an advance on the present law is justified and that the Legislature should do all that is possible to discourage the system of early marriage and premature cohabitation that prevails in India. My reasons are substantially those that have been so often advanced by Sir Hari Hingh Gour, Lala Lajpat Rai (see for instance their speeches in the Legislative Assembly on the Children's Protection Bill, on Thursday, the 9th February 1928) and other leading politicians. The system is an evil, deleterious to national well-being.

Religion and custom can no doubt be urged against such legislation, and I can remember the agitation about the alteration of the law in 1891. On the other hand, there is good authority for the view that raising the Age of Consent does not really interfere with the Hindu religion (*cf.* for instance, Mr. S. Shrinivasa Iyengar's speech on the Hindu Child Marriage Bill in the Legislative Assembly on the 15th September 1927). And if a custom results in evil, there is justification for legislation being ahead of ill-informed public opinion, just as there was for the legislation that abolished *Sati*.

3. (a) They are fairly frequent. The following table shows the number of cases of rape brought to trial from 1921 to 1927 in the Bombay Presidency excluding Sind:—

Year.	No. of cases.
1921	58
1922	66
1923	72
1924	70
1925	66
1926	86
1927	91
<hr/>	
TOTAL	509
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This gives an average 73 a year. It may be safely assumed that a good number of other cases are not reported owing to the reluctance of parents to do so. There are also a considerable number of cases where girls are kidnapped or seduced for immoral purposes, that come before the Courts in this Presidency every year.

(b) It is too early to say whether this amendment had any such effect. So far as I am aware it has not; but it has the effect of rendering it easier to get a conviction in the case of raped girls, whose age is between 12 and 14.

(c) I cannot suggest any measures that are likely to be practicable. The crime of rape exist in every country, and the fear of detection and punishment is the best preventive.

4. I am afraid the answer to this must be mainly in the negative. I do not think that legislation of this kind can do much towards preventing early marriage, etc. The difficulty is that consummation of marriage below 13 is seldom brought to light in a Criminal Court. I believe there has been only one recorded case of a prosecution of a husband for raping his wife under section 376, Indian Penal Code, in a High Court Criminal Sessions. I also had a case before me recently on the Appellate Side, where evidence showed clearly that the husband had murdered his wife who had not attained

puberty, because she objected to his having sexual intercourse with her. But such cases very rarely come to light. I think the main remedy is to stimulate public opinion, and for that purpose it is desirable to raise the Age of Consent for wives also above 13 and to prohibit child marriages.

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**Written Statement, dated the 7th August 1928, of Mr. G. B. TRIVEDI, B.A., Bombay.**

1. There is considerable dissatisfaction with the state of law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code. The public opinion in the country has now grown in favour of advanced marriages of girls. Even orthodox people are not against raising the age of marriages.

2. In my opinion, the present circumstances justify making an advance on the present law. Educated and enlightened parents are not afraid of the orthodox opinion and give good education to girls before they are married. Child-widows plight has appealed to orthodox sentiment and they are prepared to allow advanced marriages rather than see girls becoming child-widows at early age. The Joint Family System is slowly dissolving and people realise the hard lot of widows left without means of maintenance. People now realise that widowhood of girls would disappear if child marriages were made impossible. Hence public opinion now is in favour of raising the age of marriage.

3. I am not competent to reply to this question as I am not a practising lawyer.

4. In Gujrat and Kathiawar, which provinces I represent, the raising of the Age of Consent within the marital state to 13 years has not been effective in protecting married girls against cohabitation with husbands within the prescribed age-limit. It is the social custom here of sending the girls to their husbands' houses soon after marriage that counts for in this matter. Neither the girl nor her parental relations, think of resorting to law if the husband's party insist on taking the girl to their place. Once the girl goes to her husband's place, the women-folk as a matter of course send her to her husband which invariably leads to cohabitation especially if the husband is a grown-up man or has married a second time. Better way is to prohibit marriage of girls under 14 or if possible under 16 or to make the cohabitation of girl under 14 a cognisable crime, so that neighbours may lodge complaint against husband insisting on cohabitation.

5. The usual age at which girls attain puberty in Gujrat and Kathiawar is 14. It does not differ in different castes or communities.

6. Cohabitation soon after marriage is common in my provinces even before puberty. No case comes to court unless the girl is injured and police files complaint.

7. The practice of early consummation of marriage before puberty is not due to religious injunctions, but to social custom.

8. Garbhadan ceremony or pregnancy ceremony is performed in my provinces and is done in the 6th or 7th month of pregnancy.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In my opinion 16 years is the minimum age to justify consummation, provided the husband is not over 30. In case the husband is over 30, I would consider 20 years of age for a girl to justify consummation. Girls under 16 marrying husband over 30 are physically ruined and succumb to consumption and such other cruel diseases. Girls under 16 hardly understand their position in a new family. They are not mature in body or mind and such early marriages lead to unhappiness. Baby-mothers are hardly strong enough to rear babies while mentally they are unhappy under harsh treatment of unsympathetic

mothers-in-law. For all these considerations I am of opinion that girls should not marry under 16.

10. In India, in the present state of low percentage of education amongst our girls and in absence of strong educated public opinions in Europe and in America, girls should be protected by State against early consummation of marriage. Girls under 16 hardly realise consequences of cohabitation and can hardly give an intelligent consent to it. If 18 and 21 years are considered a limit of minority in the management of money and estate, how can a girl under these years be considered major enough to take care of her body without ruining it or falling prey to husbands who are impatient of cohabitation.

11. I know of many relatives, friends and acquaintances in which girls married at the age of 13 or 14 is ruined in physic by husbands who are over 30 years in age. Even if the husbands be younger, the early cohabitation ruins the health of young wives and leads to their early death or a wretched life of disease and decay.

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**Written Statement, dated the 3rd August 1928, of Mr. K. B. BHADRAPUR, M.A., Sub-Divisional Magistrate, Ratnagiri.**

1. In "Fifthly" of section 375, Indian Penal Code, "eighteen" should be substituted for fourteen years. Looking to the educational backwardness of Indian sisterhood, a girl of fourteen years of age is hardly capable of understanding the far-reaching consequences of cohabitation. A consent given without considered views is no consent in fact and should be so in law. The age of discretion should be the Age of Consent.

The age-limit of thirteen years fixed in clause "Exceptions" should be raised to fifteen years. The object of fixing the age-limit in this clause is to prevent husbands from having sexual intercourse with their wives before they have attained puberty. But as the age-limit is fixed too low, the object in view is not uniformly attained. It is common knowledge that girls brought up well mature earlier than ill-nourished and sickly ones. Girls from poor families, in which early cohabitation is practised more extensively than in civilized society, attain puberty somewhere above thirteen and below sixteen years of age. The law therefore affords no protection to such girls, who need it most. At least to cover the majority of cases, the age-limit should be raised to fifteen years. Cohabitation before puberty is productive of much suffering and injury to child-wives. It would also in the long run lead to the physical and mental deterioration of the community to which they belong.

2. As given in answer to question No. 1.

3. In my experience of 15 years of service in various capacities in different parts of the Presidency, Khandesh Districts seem to carry off the palm for rape cases. The virile Bhils and other backward classes are responsible for a large number of these cases. The climate is braeing and they are better off than poor classes elsewhere. One peculiar feature of these cases was, if my memory fails me not, that they occurred more frequently in cold weather and fair season than at other times. The peculiarity can be easily explained. Next come Deccan Districts, Konkan Districts tailing off last. The Kunbis of Konkan are head and ears in slavish khoti and their whole life seems to be organised to keep the wolf from the door. They have little time left for other things. They are the most moral and domicile of poorer classes that I have come across. The experience gained is too short to generalize.

4. As in above paragraph.

5. As in answer to question No. 1.

6. The popular belief is that a girl becomes fit for consummation of marriage, as soon as she attains puberty. Cohabitation soon after puberty is therefore most common in the case of married girls. Educated circles do, however, display a tendency towards putting off consummation. In very low classes of society, such as Mahars, Waddars, etc., cohabitation before puberty is not unknown. Age has little to do with beginning to cohabit. It is the attainment of puberty that determines it.

I know of a case from Khandesh, where a Gujar girl of tender years, hardly thirteen, was brutally ravished by a young Bhil. The girl had not attained puberty.

7. The popular idea is that Shastras enjoin consummation soon after puberty. So far as my knowledge goes, I know of no such Shastric injunction. There is, on the contrary, plenty of evidence that late marriages were popular in ancient times. Almost all heroines known to Sanskrit literature are represented to have consummated their marriages long after puberty. To quote only two classical instances. Shakuntala's marriage with Dushyanta was an advanced and at that a love marriage. Malati and Madhavi were stealthily married at quite an advanced age, through the machinations of Kamandaki, the Chanakya of petti-coat politics. These examples, though not historical, cannot be altogether untrue to life.

8. I know some such ceremony as "Garbhadan" obtains with us here, though it goes by different names with different communities. It is the same thing as consummation of marriage and is performed generally soon after attainment of puberty. The modern tendency in educated society is to take it forward as much as possible.

9. The attainment of puberty is a mere beginning of physical maturity. It would not justify consummation of marriage until at least four years after.

10. At eighteen years of age.

11. I have not come across cases of cohabitation before puberty. But I have noticed several cases where cohabitation after puberty but before full physical development is reached, has resulted in girl-mothers succumbing to death as a result of one or two child births. The instances are too numerous to mention and any one who runs may read them broad writ in the sad domestic life of middle class Hindus.

12. Early maternity is responsible for high infantile mortality. It also undoubtedly affects the physical and intellectual growth of the people. Children born of immature maternity cannot but be dwarfs and wrecks both physically and mentally. The plant partakes of the seed and as the plant is, so would be the tree and so on goes the vicious circle.

13. Experience gained is too short to admit of an answer. Education is doing its work slowly but effectively.

14. Not so, except in very low society.

15. I have not met with any special difficulties in the matter of determining the age of girls.

16. The difficulty, if any, would be reduced materially if the Age of Consent is raised to eighteen years.

17. The marital and extra-marital offences should be separated for clarity.

18. No.

19. No remarks.

20. In addition to fixing a higher age-limit in marital cases, legislation of the kind contemplated in Sarda's Bill would be useful in checking child marriages.

21. One is the handmaid of the other. Some public opinion must precede legislation and legislation is needed to consolidate public opinion.



Written Statement, dated the 7th August 1928, of Mr. P. B. SHINGNE, B.A., LL.B., Government Pleader, High Court, Bombay.

1. To my knowledge, there is no dissatisfaction felt. There was some commotion at first. But it has died out.

2. I am in favour of making an advance on the present law. That is necessary to preserve health of girls and to procure health in the children.

3. To my knowledge, crimes of seduction or rape are not frequent in my part of the country. I am not in a position to state if the amendment made in 1925 has succeeded in preventing or reducing cases of rape. I do not think that the measures available now are inadequate.

4. I do not think the amendment of 1925 has in itself been much effective in the direction of protecting married girls against cohabitation with husbands within the prescribed limits. I am afraid the bulk of the population may not be aware of the change in law. It cannot, however, be asserted that the amendment has not at all stimulated the opinion of some portion of the population. Owing to various causes, the marriages of late do happen to be put off. I say this more specially in connection with the Deccan Provinces. I do not think that any special measures are necessary except that, I think, the Rule of Law may be circulated by printing leaflets in the vernaculars and distributing them through the village officers.

5. The girls attain puberty by 14 generally. In communities, which work on manual labour, I find, that the period is a bit prolonged.

6. It is difficult to answer the question with confidence. But I think cohabitation before puberty or before the girl completes 13 years is rather rare. But cohabitation soon after puberty is usual. In advanced communities, in this Presidency, the marriageable age has really been prolonged, and this naturally prolongs cohabitation soon after puberty.

7. I do not think that the practice of early consummation of marriage is as a fact due to religious injunction. It has the force of habit.

8. Yes, the ceremony is usually performed. It coincides either with the attainment of puberty, if the girl was married and the husband was present in the house at the time of attainment of puberty by the girl.

9. I do not so consider. The proper period should be at least 18 years complete.

10. To speak modestly, 18 years complete.

11. As I note events, cohabitation before full physical development of a girl does result in injury to her health and prejudicially affects her progeny. I see that in many cases, the girls subjected to early consummation get emaciated, give birth to children who are evidently weak and themselves die early and the fate of the progeny is not enviable at all.

12. To some extent early consummation and early maternity are responsible for the high maternal and infantile mortality. But economic poverty, residence in insanitary localities are some of the other reasons which contribute to the result.

13. I am not able to confidently state if the amendment of the law in 1925 has developed public opinion in favour of the Age of Consent. But of late, for other reasons, such as economic condition of the people, the tendency in the higher classes to send the girls to school, consummation has happened to be delayed.

14. I am not posted with sufficient information on the point.

15. I cannot say. I think that the recording of births should be very strictly enforced.

16. I cannot say.

17. I would not. But if some difference deserved to be preserved, the punishment in connection with the extra-marital offences should be more severe.

18—19. No.

20. It will, I think, do at present to fix the minimum age of marriage.

21. Both the remedies should be made to work. In those communities in which education or social reform are at their minimum, the force of the Penal Law will be useful provided measures are adopted to keep the people informed of the dictates of law.

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**Written Statement, dated the 8th August 1928, of Mr. I. N. MEHTA, B.A., LL.B., Presidency Magistrate, 4th Court, Bombay.**

1. There is dissatisfaction as to the Age of Consent as it at present exists under sections 375 and 376 of the Indian Penal Code.

2. The circumstances which in my opinion justify the raising of the Age of Consent by two years are these.

It seems that the age of 14 as the Age of Consent seems to have been fixed in those sections of the Indian Penal Code probably under the belief that Indian girls attain puberty when they are 13 or 14 and most of them were married at about that age and therefore they should be considered as capable of giving their consent after 14 years. The attainment of puberty in Indian girls comes earlier because of the tropical climate but it does not follow that that fact alone would enable them to understand the consequences of cohabitation with a person. Most of the girls when they attain puberty first are not exactly aware of this phenomena and come to understand by and by the nature of that phenomena. I think therefore that it must be presumed that within 2 or 3 years after attainment of puberty they would be able to understand the physical change and development in their constitution and therefore the raising of Age of Consent to 16 is essential.

3. Fairly frequent. To make the law effective I would suggest its rigorous application.

4. It is difficult to say. I would suggest penal legislation on the lines of Sarda's Bill fixing the age of marriage for girls at 14 and above and boys at 18 and above and prohibiting marriages below that age.

5. 13 or 14.

6. Soon after puberty cohabitation is common among the lower classes. Very few cases come to court.

7. I do not attribute the practice of early consummation of marriage at puberty to religious injunction but to blind belief that a girl attaining puberty is mature enough for cohabitation.

8. No.

9. No. At least three years after attainment of puberty.

10. At the age of 16.

11. A few cases but I cannot give details now.

12. Certainly. Early consummation and early maternity are the chief causes of high infant mortality. They are also the chief causes of weak progeny and if weak progeny continues generation to generation, the physical development is retarded and grows weaker and weaker and a nation composed of such physical wrecks remains imbecile.

13. There has been development of public opinion in Bombay. Even Indian ladies have held meetings in support of raising Age of Consent and age of marriage. It must be admitted however that it is not general but is confined to educated ladies of the upper and middle classes.

14. No.

15. Difficulties have arisen. Production of a birth certificate whenever possible would be the best remedy. Whenever medical examination is taken the girl should be X-rayed so as to ascertain the development of bones by test of ossification.

16. I do not think so

17. Yes. For extra-marital offences I would retain the present punishment. For marital offences I would fix the maximum punishment at 2 years or fine or both.

18. The trial for offences without the marital state should be exclusively by Sessions Courts as at present but I would suggest that the trial for offences within the marital state should be by a Presidency Magistrate or Magistrate of First Class.

19. Not necessary.

20. I consider that penal legislation fixing the minimum age of marriage is likely to be more effective than the one fixing a higher Age of Consent, because if a minimum age is fixed by Law it is certain that there could be no consummation before marriage, while in the other case there is very little probability of young girls coming forward to say that there was consummation of marriage by the husband before the Age of Consent.

21. I would depend on the strength of Penal Law. Social reform by means of propaganda has proved ineffective. Education has to a certain extent proved effective but we must remember that the percentage of persons taking education in India is very small and therefore Penal Law would be strong enough to secure the object in view.

**Written Statement, dated the 10th August 1928, of Mrs. KHADIJA SHAFFI TYABJI, Bombay.**

1. Yes.

2. (2) Making an advance on the present law is necessary as early marriages prevalent at present as a result of the Age of Consent for married women being only 13, are the real cause of increased infant mortality, physical breakdown of mothers and general illiteracy.

3. No reply.

4. (2) The amendment of 1925 has stimulated public opinion in favour of protecting married girls against cohabitation with husbands within the prescribed age-limit.

5. Twelve or thirteen.

9. No, the girl should be at least 16.

10. It varies according to the education of the girls. But 18 would in my opinion be the proper age for giving an intelligent consent.

11. Yes, many cases.

12. Yes.

13. Yes, there is a general development of public opinion since 1925.

14. No.

15. Difficulties have been experienced.

20. Legislation fixing the minimum age of marriage would be more effective.

21. I would prefer to rely on the strengthening of the penal law.

Written Statement, dated the 8th August 1928, of Mr. N. V. MANDLIK, B.A., LL.B., J.P., Sheriff of Bombay.

I have the honour to state that it is difficult for me within the short space of time at my disposal to answer "seriatim" all the points contained in the questionnaire. However, I propose to reply generally as follows:—

2. I am of opinion that no amount of legislation will prevent or alter a state of affairs which has been tolerated for a period of years by society or a section of it. It is enlightened public opinion, raising the moral standard of the people, that alone can bring about the necessary change. That enlightened opinion can be the product only of education and a desire for social reform. The increase of education as well as the raising of the standard of education among the classes and the masses are to my mind the main factors which must produce a panacea for the evil which is sought to be combated, if not eradicated.

3. There can be no doubt that the marriageable age is, without any conscious effort, but rather as a result of the spread of education, rising among the higher and the more enlightened classes. It would not be too much to expect that with the spread of education among the masses a similar result will be attained. Such a sudden and violent change as legislation must produce would be conducive of nothing but widespread dissatisfaction and the retardation of the very object which it was sought to be brought about by legislative interference. It should be borne in mind that as a matter of fact early marriages in a good many Hindu sects are enjoined by custom and religious precept. The proposed legislative changes, if hastily carried out, are sure to cause great discontent. The mind of the people, especially among the masses, must first be imbued with the desirability and necessity of the proposed reform. Otherwise, the remedy may prove worse than the disease.

4. Although I do not think the raising of the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state, because the number of such cases appears to be on the increase rather than on the decrease, still the statistics of such cases in this part of India would seem not to compare adversely with those of Western countries.

5. It would be difficult for a mere layman to pronounce on the results of early consummation of marriage. Whether it leads to higher infantile mortality or is productive of intellectual or physical deterioration is more than I can say. It cannot be disputed, however, that early marriages are not the only cause of the birth of weak children. For, in spite of the fact that early marriages were the rule, rather than the exception in the earlier ages, the children born of the parents of such marriages were physically and mentally healthy and vigorous.

6. It cannot be denied that public opinion, including female public opinion, in favour of raising the Age of Consent is steadily developing, due more, in my opinion, to social reform and spread of education than legislative enactment.

7. As to the question of punishment for the offence of rape, the maximum already prescribed by law is high, but may be necessary for dealing with cases of a gross nature. I am aware that the Judges have not hesitated in inflicting the maximum punishment in cases demanding it. But, I think that one punishment befitting such cases which the law ought to provide and has not provided, is the punishment of whipping, which, in spite of all that is said against it, is more dreaded and will act as a greater deterrent in such cases than any other.

9. I think I shall not be able to usefully add anything beyond what I have stated in this brief expression of my views on the subject by giving oral evidence. The Committee will, therefore, be good enough to exempt me from it.

**Written Statement, dated the 10th August 1928, of Mr. BERAM N. SANJANA, District Judge, Thana.**

1. Yes. So far as the Age of Consent in the 5th clause of section 375 is left at 14 years, every thinking man or woman is bound to be dissatisfied and dissatisfied strongly with the state of law which permits seduction of a girl of immature understanding and small resisting power with impunity. Our law treats a person under 18 years as not having attained sufficient intellectual development to be in a position to make a contract about his or her own property. If the same law treats a girl under 18 as free to barter away her own virginity it can hardly lay pretension to consistency or command approval.

As regards the age-limit of the intercourse between a man and his wife, that question, in my opinion, cannot and should not be dealt with separately from the larger question of child marriage. If you permit marriage under a particular age you cannot, with any pretext to logical consistency, make sexual intercourse between a married pair under that age an offence in law.

2. Every consideration, biological, social, moral and physical, requires an advance on the present law. Seduction of a girl under 18 (by one not her lawful husband) should be penal. For, she has not that maturity of understanding or self-control as to be regarded a free agent. She must be treated as incompetent to consent to the deflowering of herself quite as much as to parting of her property.

A girl does not ordinarily attain sufficient physical or intellectual development before 18, to be the mother of a healthy child, or to bring it up properly. Infant marriages have been the cause of inferior physical stamina of our race. Whatever circumstances may have forced that custom on our people in the past, they no longer survive or are fast disappearing. At the present day the practice of infant marriages exercises but retarding effect on the material, moral and social progress of the country, if not also intellectual. The evil requires to be rooted out with a strong hand. The only impediment in the way is the ingrained habit of the masses. But new ideas will not take long to permit the masses if they are brought in contact with them in the vivid form of a penal law. The object in view may be achieved by gradual stages. For instance, age-limit for marriage may at first be put low. But it should be steadily raised until all marriages of persons who have not attained majority are prohibited.

3. Yes. The crimes of seduction and rape are very common. The amendment of law made in 1925 by raising the Age of Consent to 14 has not appreciably altered the situation. Because most cases of seduction are in connection with girls on the border line of 16. A mere law prescribing penalty for offences seldom eradicates the crime altogether. All it can reasonably be expected to do is to exercise a controlling influence on the criminal propensity. For that purpose the provisions of sections 375 and 376 as far as they go are effective enough. Only they do not go far enough and touch the real evil as they prescribe the Age of Consent at a very early period of 14 years.

I should amend the law by raising the Age of Consent for extra-marital offence to 18 years.

7. No. Apart from the fact that an unthinking man often mixes up customary practices with religious prescriptions, I do not think anybody seriously believes a marriage before puberty to be a divine injunction.

9. In my opinion, the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. Each individual even in the same community or class does not attain full physical development at exactly the same period. But prudence and course of safety point to the age of 18 as the proper limit in this respect, as it has also been found by long experience to be the proper limit for acquiring contractual capacity.

10. Not less than 18.

14. So far as Parsis are concerned. No.

15. Difficulties have often been experienced in determining the age of a girl in connection with offences under sections 375 and 376. The medical testimony and the appearance of the girl have often been the only data to proceed upon. It is not possible to suggest any measure for the removal of the difficulty unless it be an improved and extended system of birth register all over India.

16. I hardly think that will have any effect. Wherever you put the limit the question will always follow you whether the girl is within or outside that limit. In my experience most cases of the kind arise where the girl is round about 16.

17—18. I would make a distinction between extra-marital and marital lapse. So long as marriage below a certain age is not prohibited by law, exercise of marital rights below that age cannot, in my opinion, on any sound principle, be made an offence. I should remove the latter from the category of offence altogether. For extra-marital offence the punishment prescribed by section 376 and the Whipping Act is, in my opinion, quite adequate.

If exercise of marital rights under certain age is to be retained as an offence, then, I am in favour of putting it in a distinct category. I should, for instance, remove it altogether from sections 375 and 376 and suggest a new section 376A making sexual intercourse with a wife under 16 an offence punishable with imprisonment up to two years or fine and make it triable by a Presidency or First Class Magistrate.

19. Instances of collusion or improper prosecution have, within my knowledge, been not so many as require any special safeguards beyond those existing in the present law.

20. I do not consider that a penal legislation fixing higher Age of Consent for marital cases will be very effective. It will always be ignored as is the case now. The only legislation that has any chance of proving effective and accelerating the progress of reform is the one fixing a minimum age of marriage.

If the intelligent section of the public are put to an alternative, they would, in my opinion, prefer legislation about the minimum age of marriage to making exercise of conjugal rights between married couple under that age an offence.

21. On both. So far as extra-marital offence is concerned, I am of opinion, the matter cannot be left to mere education and social propaganda. So far as marital intercourse is concerned our chief reliance must be on social reform, but a well directed law on the subject would at the same time prepare a ground for its favourable reception.

**Written Statement, dated the 10th August 1928, of Mrs. MOTIBAI  
M. D. THACKERSEY, Bombay.**

1. Apart from any active dissatisfaction, I find growing tendency in favour of a higher age-limit among the more enlightened classes.

5. The usual age at which girls attain puberty is 14 years.

6. Cohabitation is common on this side but in majority of cases after attaining puberty. Cases involving infringement of law in this respect rarely go to courts.

7. I think the practice of early consummation of marriage at or before puberty may have originated from misinterpretations of the teachings of Manu Smriti in this connection. I do not know of any religious injunction and if at all any exists, I refuse to believe.

8. Very few people on this side perform this ceremony and that too after attainment of puberty.

9. I think attainment of puberty marks the transition from girlhood to womanhood. But I refuse to maintain that it is a sufficient indication of physical maturity. After puberty the development into womanhood is very rapid and it is essential that the progress should not be interrupted by consummation of marriage. It is advisable that it must go on up to the age of 16 years.

10. I believe she should be of 16 years of age before she can give an intelligent consent with due realisation of consequences.

11. Cohabitation before puberty is always bad. Again cohabitation before full physical development is highly undesirable and must be discouraged by all possible means. It leads to physical break down of the mother and prejudicially affects the health of her children.

12. I am sure, the high rate of maternal and infantile mortality is due to early consummation of marriage. Not only that but it adversely affects the health of the parents and progeny and without a sound body there can be no sound mind.

13. I find a distinct change of opinion among enlightened classes in favour of a higher age-limit but the masses are reluctant to follow up.

14. Orthodox women are the most stubborn. One of their greatest desires in life is to see their daughters married and children born to them as early as possible.

15. I suggest strict enforcement of the law relating to the registration of births with the proper authorities.

17. The two offences may be treated separately. Maximum punishment for extra-marital cases may be fixed at 10 years and for marital 7 years of either description with or without fine or both.

20. Penal legislation is likely to be more effective than fixing of the minimum age. Both are unsuitable to the orthodox. I favour the former.

21. I am decidedly in favour of strengthening the penal law to secure the object in view. Of course spread of education and social reforms are contributing their quotas but unless the orthodox are goaded up by means of penal laws, there can be no real progress in the right direction. While the former are sufficient for the enlightened, the latter course is indispensable to the orthodox masses.

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**Written Statement, dated the 10th August 1928, of ATIYA BEGUM SAHIBA, Malabar Hill, Bombay.**

I am sorry that your questionnaire had to lie unanswered owing to pressing work, and as there is not much time left I would like to make a general statement regarding the subject under enquiry, which in my opinion will avert the grave calamities resulting in child marriages in India. As more or less your questions are connected with one another, my suggestions will cover the grounds more or less.

It is impossible to make a hard and fast rule in India, and expect people to observe it under the present stage of mass illiteracy and racial distinctions. If they will not do it openly they will resort to it secretly law or no law; custom and belief are more to them than law and religion. Miss Mayo has not exaggerated the appalling conditions in India in her book, and Indians are cowards when they don't acknowledge their faults, and we all know from personal observations and work that terrible state of affairs prevail in any part of India and almost in any community. It is always safe to enforce 'law' and girls should not be allowed to marry before 15. Just as much as late marriages are not a 'safety valve' in the same manner child marriages are not desirable, but as soon as a girl is of 'age' 14—16 it is safer to marry her off. The freedom of 'west' has resulted in a complete disorganisation in their society and such an 'unlicenced freedom' is not good for any body if 'respectability' matters at all. Such a freedom has-

unfortunately crept into India a good deal, and it is detrimental to the community at large. No one likes it, but no one can help it, and the chief source of trouble is that the 'system of education' in India is deplorably deficient. Our girls 'cast' their precious lives in acquiring useless letters and adopting foreign ideas and methods. The result is an utterly sensational hybrid creature who does not know what to do with herself. The natural consequence is 'grave demoralisation' unhinging (?) ideas of honour anything by modern fashionable society.

There is only one remedy for this grave evil that is capping the 'soul' of India and that is establishing sensible institutions for women all over the country by which they may become sensible self-reliant women capable of earning 'honest living' and not be *forced into crimes or die in the streets*. Industrial and technical institutions which would shelter them, teach them how to use their hands and brains, and not crave for book knowledge to acquire B.A. and M.A.

Indians are born artisans and if only facilities would be provided for them on the lines that are natural to them, many or most of the so-called social and religious evils will be automatically solved and wiped off. My observations are entirely based on personal work and experience. I have founded industrial institutions in the village of Koaka which have entirely changed their outlook in life. In fact whereas immorality and drunkenness was the only mode of living resulting in devastation all through, an industrial and educational institution in a certain village near Bombay coast has wholly revolutionised the outlook in life altogether. Industrialism is the chief 'safety valve' of all degeneration and if the Age of Consent Committee will entrust a certain area to me, even a town, I shall be quite willing to run the institution on the lines that I suggest and the poorest and lowest classes will not easily think of infant marriages, etc., but a healthy training will produce a healthy minded race who will know how to take care of itself and thus help to keep up the dictates of 'law'.

I hope I have made myself clear. Instead of concentrating on enforcing laws, which will hardly be understood much less kept up by the masses, it would be far to the point to go to the 'root of evils' to bring about the desired results. At present our girls and women have no place of refuge, they wander aimlessly and fall into a deep pit to keep their bones and skin together. As soon as they feel that there are places which will make them physically and mentally fit they will run there for protection.

**Written Statement, dated the 9th August 1928, of the Hon'ble Mr. Justice W. T. W. BAKER, B.A., I.C.S., Acting Judge, High Court, Bombay.**

In reply to your letter No. 42-A. C. C. of 25th July 1928 enclosing the questionnaire of the Age of Consent Committee, I have the honour to state that I have not the necessary knowledge to answer most of the questions.

As regards question No. 2, I think, it would be generally admitted that the evils of child marriage and the consequent effect on the physique of the community would justify the raising of the Age of Consent.

As regards question No. 3, the number of cases of rape brought for trial between 1921 and 1927 in the Bombay Presidency excluding Sindh was 559, an average of nearly 80 a year. I am unable to state whether the amendment of the law made in 1925 raising the Age of Consent to 14 has succeeded in preventing or reducing cases of rape outside the marital state, although it may have raised the number of convictions.

As regards question No. 4 whether the amendment of 1925 raising the Age of Consent within the marital state to 13 years has been effective in protecting married girls against cohabitation with husbands within the



prescribed age-limit, the only remark I have to offer is that in the whole of my experience I do not remember having met with a case where a husband was charged with rape on his own wife, and I believe that such cases are not likely to come before the Courts except on the rare occasion when the result has been serious injury to the girl.

As regards question No. 15, I have frequently found great difficulty in determining the age of girls in connection with offences under sections 375 and 376, Indian Penal Code. In the absence of a birth certificate the determination of age is extremely difficult as medical evidence on the point is often inconclusive, and the only measure I can suggest to remove this difficulty is the strict enforcement of the registration of births. The raising of the Age of Consent will not, in my opinion, materially reduce this difficulty.

As regards question No. 17, in view of the rare occurrence of marital offences, I hardly think that any separation between different classes is necessary, and no difference in the procedure of trials for offences within and without the marital state seems called for.

**Written Statement, dated the 12th August 1928, of Mr. GIYASUDDIN J. KOKNI, Honorary Magistrate and Municipal Councillor, Nasik.**

1. There is no dissatisfaction.
2. In my opinion the age should be raised to fifteen. Ordinarily Indian girls are not of strong built and the strain and shock impairs their health very much.
3. No, I am not aware of the fact.
4. (1—3) No.  
Marriages below the age must be penalized.
5. Between the ages of 12 and 15 girls of well-to-do classes attain puberty earlier.
6. (1) Not common.  
(2) Most common.  
(3) If she is matured, such cases rarely come to Court.
7. It is said that among the Hindus there exist some religious injunctions. I do not know the authority.
8. Yes, amongst Hindus only. It is performed just after puberty.
9. No. Time cannot be fixed. It will depend upon the health of the girl.
10. It should be the limit.
11. I cannot exactly remember details.
12. Yes, but there are other causes also.
13. None except in a few educated families.
14. Cannot say.
15. No difficulty is experienced as the medical certificate determining the age is accepted as an authority.
16. It makes no difference.
17. There is no need of doing so.
18. The present procedure should be continued.
19. The present law is quite sufficient.
20. It is the only way to stop early marriages.
21. Law only can strengthen and secured the object in view. Social reform and propaganda cannot be carried into villages.

**Written Statement of Miss J. B. ENGINEER, Hirji Mansion,  
Cumballa Hill, Bombay.**

Your copy of the questionnaire, prepared by the Age of Consent Committee, dated the 31st ultimo, has reached me on the 26th instant. As regards my opinion subject I beg to express what I can, on the same.

I do not think there is any dissatisfaction with the state of the law, as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code. Even if so such criminals must be thoroughly punished.

I would prefer making an advance on the present law of Age of Consent as much as sixteen years for then the girls are in a better condition to understand their responsibilities.

To my knowledge, the crimes of seduction or rape are not many in our country.

I do not consider that the amendment of law made in 1925 raising the Age of Consent to fourteen years has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. In such cases law must be brought in, punishing persons seducing a girl under sixteen with or without her consent.

One cannot say whether the amendment of 1925 raising the Age of Consent to thirteen years, has been effective in protecting married girls against cohabitation, with husbands within the prescribed age-limit because such things can never be prevented, nor found out, sufficiently, unless the lower classes are educated, and understand sufficiently the responsibilities of their acts, but under any circumstances the marriages can be put off till the age of sixteen or upwards. If not steps should be taken by law inflicting punishment of imprisonment on such persons.

The usual period at which girls in our country attain puberty varies from 11 to 14 years, but this differs according to climate, race, social conditions, habits and residence.

Girls of hot climate reach puberty earlier, than those of cold climate. In hot climate the average is from 11 to 14 years, in intermediate countries from 13 to 17 years, and in cold climate from 13 to 20 years. English girls living in India, attain puberty at the same age, as in their own countries. Town girls attain puberty earlier than country girls. Those taking rich and stimulent food earlier, than those taking poor food. Rich girls earlier than poor girls. Heredity, early or late, is met with in certain families.

Cohabitation before puberty, is not rare amongst lower classes. There are also some cases only, of cohabitation soon after puberty and that also in lower classes, and the same is the case with girls before they complete thirteen years amongst lower classes again.

All these cases go to Court, but very rarely. I do not approve of the practice of early marriages at all.

I do know what Gaona or Garbhadan is. It is a sort of bed ceremony amongst the Hindus and certain other nations, but I do not know the time of its performance. I do not consider, that the attainment of puberty in girls is a sufficient indication of physical maturity to justify consummation of marriage because it breaks down the constitutions of girls, leads them to weakness, and impairments, of their mental faculties to a great extent.

Eighteen years and upwards, I should think is the proper age to justify such consummation without injury to her own health and progeny.

A girl in India, I consider, would be competent to give an intelligent consent to cohabitation with a due realisation of consequences at the age of sixteen years.

I do consider early consummation and early maternity responsible for high maternal and infantile mortality, because very young mothers in most cases specially amongst lower classes are not at all aware of how to take-

care of their infants. In some cases the mothers themselves are so ignorant that they cannot take care of themselves.

They neither understand about their own cleanliness nor about the cleanliness of their new born babies and infants.

Infant feeding and nursing are far beyond reach of such mothers. Consequently, there is high mortality from infantile diarrhoea, bronchitis, pneumonia, etc., are also found mainly amongst infants of such mothers from want of proper clothings and care.

Such young mothers also neglect their own healths, and remain careless of their own constitutions during their confinements. Consequently some of them become preys to pelvic and other diseases. They either ruin their healths permanently, or linger in bed, or become subjects to death. In short early consummation causes physical and constitutional disturbances amongst such mothers and infants. Leaving aside infants, in their infancy, even if they grow up to be children they meet with the same fate from want of intelligence in their mothers. They eat anything, drink anything, and generally suffer from dysentery and other stomach and intestinal troubles.

A good many persons are in favour of extension of Age of Consent, while others are not. Certain races such as Hindus and others of the kind are in favour of early marriage (before puberty) from their religious point of view.

I am of opinion that penal legislation fixing a higher Age of Consent for marital cases, is likely to be more effective, than legislation fixing the minimum age of marriage. I should think, however, that the public are divided in their opinions.

To secure the object in view of making an advance in Age of Consent, I should think education and social propaganda would be more effective, because then only the illiterate people would be better approached, and explained about the advantages and disadvantages, and risks of early marriages, and consummation, which lead to serious and sometimes fatal consequences.

Practically it would require a lot of patience and time to win over the illiterate people to our side, and preach to them on the subject in a very effective and winning manner, and to request them to preach the same in turn to their friends and relatives in like manner.

The education amongst lower classes would widen their scopes of ideas and make them fruitful to be put in practice in the matter of Age of Consent.

This is, Sir, my opinion on the subject from personal experience, which I hope will be to a more or less extent approved by the Committee.

**Written Statement, dated the 11th August 1928, of The Hon. Mr. MANMOHUNDAS RAMJI, Bombay.**

1. No, not so far as the masses are concerned, as we do not find any proof of dissatisfaction from the masses.

2. On account of the raising of the Age of Consent from 14 years to 16 years, making an advance on the present law is also necessary.

3. Not to my knowledge.

4. Sufficient time has not elapsed after the passing of the amendment of 1925 raising the Age of Consent within marital state to 13 years, to pronounce considered opinion on the subject.

5. About 13 years.

6. (1) Not to my knowledge.

(2) In rare cases only.

(3) In a few cases only but after attaining puberty.

8. Yes, generally after puberty.

9. Generally so.

10. As far as the Indian religious and social customs are concerned, a girl even if competent can not exercise her right of consent to cohabitation at any age unless she be prepared to court separation from her husband for the whole life, by refusing herself to him in exercise of this right.

11. Not to my knowledge.

12. Yes, if too early consummation takes place.

13. Not only since the amendment came into force but much earlier, a great development is taking place in raising the age of marriage.

14. Not necessarily.

17. Yes.

18. Yes, the marital cases should be made triable by a judge with the aid of assessors.

19. The complainant should be the girl herself only.

20. No. Of the two, fixing the minimum age of marriage will be in consonance with the public opinion.

21. On the progress of the Social Reform in the different Indian communities.

**Written Statement, dated the 11th August 1928, of Mr. LOWJEE  
MEGJEE, J.P., Bombay.**

1. None so far as I know.

2. I do not think an advance is necessary at present state of the society. The age of 14 is quite sufficient because menstruation comes earlier, *i.e.*, at 12.

3. No. Not any cases from my community hence law is quite sufficient.

4. The amendment of 1925 has been effective.

(1) In some communities, the consummation of marriage does get postponed.

(2) The public opinion has been in favour of reform.

(3) No, not in any direction.

5. 12 to 14 years. This is generally true as regards Hindus, I can not say about other communities.

6. (1) Emphatically no!

(2) Very few cases now-a-days even these do not contravene the amendment of 1925.

(3) *Vide* answer (2). No such cases are ever reported to the Court.

7. The Smritis are of opinion that the consummation of marriage should take place immediately after puberty for which there is such injunction in Vedas also. Manu declares that a man will be committing murder of the embryo if his daughter is not allowed the earliest opportunity for a consummation of marriage. There are legal and social penalties. There are religious penalties mentioned in all shastras for consummation of marriage before puberty.

8. Yes. Mostly the ceremony is observed by my community and also by other Hindu communities. Garbhadan ceremony precedes consummation of marriage. It is performed immediately after the attainment of puberty.

9. It depends upon the physical and mental development of a girl. Ordinarily girl's physical development is almost fully reached by 14 and hence consummation of marriage at that age, *i.e.*, after puberty has no injurious effect either to her health or that of her progeny.

10. About the age of 13.

11. None as far as I know.

12. Yes, but intellectual and physical deterioration is  $\frac{3}{4}$  due to the climatic environment, the poverty of the people and the want of education, proper care, hygiene and nourishment.

13. Public opinion has sufficiently developed to warrant an extension of the Age of Consent in many of the enlightened communities.

14. Women do not necessarily favour early consummation of marriage for their children in any community.

15. Difficulties at times arise but there are authentic horoscopes.

16. Raising Age of Consent would materially minimise the margin of error in determining the age of girls.

17. Certainly, in extra-marital cases I would prescribe imprisonment or fine or both to serve as a moral lesson to others. In the second case fine only upto Rs. 1,000.

18. The procedure of trial for offences without marital state be treated as a criminal offence and that of within the marital state as a social and moral offence with least possible publicity.

19. I would prescribe the same punishment for the abettors.

20. No, it is not a practicable proposition to fix higher age for consummation of marriage. Fixing the minimum age is more in consonance with the public opinion in my part of country.

21. I would rely on social reform by means of education and social propaganda. Penal laws touch only the fringe of the evil.

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**Written Statement, dated the 13th August 1928, of Mr. N. P. PATANKAR, B.A., LL.B., High Court Vakil, Nasik.**

1. Consent given by girls under fourteen years of age for sexual intercourse as stated in the fifth clause of section 375, to persons who are not husbands is generally considered as not valid and is not considered to be a sufficient protection, but so far as the exception to this section, i.e., sexual intercourse by a husband with his own wife is concerned it must be admitted that even intelligent people fail to realise that a great harm is done to the girl and to progeny by premature intercourse and consequent conceptions and deliveries. Very few people know that the age of 12 was raised to 13 some years ago and the answer on this part will therefore be that there is no dissatisfaction as to the age mentioned in this exception.

2. In order to protect the Hindu girls from immorality or seduction and adultery, it is necessary to change the law and there are no circumstances which justify retaining the present law so far as consent to any immoral intercourse is given and it is absolutely necessary that an advance on the present law in this connection should be made. But when the problem is as between husband and wife, many people would like no change whatever, (1) it is almost impossible to bring into Court the violation of this section and the law would remain a dead letter. A conviction of the husband will in most cases ruin the future life in that family of the wife unless such a conviction is followed by divorce; but divorces amongst the Hindus have not yet obtained any statutory recognition.

3. Crimes of seduction and rape are not very frequent though they are not unusual. The recent change of 1925 has not gone far enough. The minor girls when they are not married must be protected until they attain majority, i.e., complete their 18th year of age.

4. The amendment of 1925 is found not to be fully known even to lawyers much less to ordinary people. It has had no effect whatever. The only way in which this evil can be put a stop to is to prevent the marriages of girls until they complete their 16th year.

5. The usual age at which girls attain puberty is 12 complete. The age may vary from 12 complete to 13 complete. But as most of the girls are married before they are 12 or 13 and intercourse by husband before puberty is not uncommon especially when there is noticeable disparity in age of the married couple, this difference does not count for much.

6. As already stated above cohabitation before puberty is not uncommon and it is invariably the case when the husband is above 20 in age. Cohabitation soon after puberty will be seen almost in all cases in married life even if the girl is under 13 in age. Such cases by the very nature of things will not come to Courts.

7. Religious injunction is only a pretext or a weapon in the hands of the agitators against reforms. The violation of the injunction that is believed to proceed from the shastraic works can be atoned for by spending a few annas and feeding a few Brahmins by way of *prayaschitta*.

8. Garbhadan ceremony is usually performed within a fortnight after puberty. This ceremony is never performed before the girl attains puberty.

9. Puberty which is usually attained before 13 years of age is no indication of the physical maturity to justify consummation of marriage; completion of the 18th year in age should be regarded as necessary to attain physical maturity—an age before the attainment of which the girl at present is mother of, in many cases, two or three children.

10. Looking to the beliefs and practices of even the most advanced classes many individuals from which have come under the influence of reforms, the age for intelligent consent may be fixed, at present, in the case of the husband to be complete 15 years in age.

11. There are numerous cases of injury to health of women by premature cohabitation and consequent motherhood. These injuries become markedly visible when the woman is 25 or thirty. Softness of bones, rheumatism are very frequent diseases, which most prejudicially affect the life of the woman. Injury to progeny is not yet usually admitted to be a result of this premature cohabitation.

12. High maternal mortality is admitted on all hands to be a consequence of early consummation and early maternity. The infantile mortality is usually attributed to bad luck.

13. As stated above the amendment of the law is not known beyond a few individuals. There is a general feeling that extension of age in extra-marital cases is desirable. The raising of age to 16 in marital cases will not generally be appreciated.

14. Woman, before men, favour very enthusiastically early consummation of the marriage after puberty.

15. The difficulties in determining the age after twelve are immense in the case of girls whose cases are likely to come to Courts. If 18 years be fixed as the necessary Age of Consent in extra-marital cases, at any rate girls under 15 will be protected. Fixing a high age is a measure that will solve some of the difficulties.

16. Raising the age to fourteen will not reduce or minimise the difficulties of determining the age. Raising to sixteen may.

17. Under the present circumstances it is necessary to separate extra-marital offences from marital offences. In marital cases a conviction should be followed by a divorce order. The parties may however be allowed to marry after the girl attains 18 years of age.

18. Procedure for offences in the marital cases should be different.

19. I do not consider that penal legislation fixing a higher Age of Consent for marital cases will remove the evil. Fixing the minimum age of marriage will only be a step in the right direction, but under the present circumstances the minimum age cannot be fixed above 14 years. This will be of no avail.

20. I certainly prefer to rely more upon active progress of social reform by means of education and social propaganda, but amendment and strengthening of the penal law may have some effect.

I would conclude by answers to these queries by one general remark that the early cohabitation and early maternity in the case of women is not generally looked down because a woman is considered to be created for the pleasure and convenience of man; unless therefore that root idea is modified and woman's independent right to a life of happiness, unrelated to man either as a husband or a son is recognised by the society or at least by the leaders of thought, progress will not be an easy task.

**Written Statement, dated the 13th August 1928, of Miss RACHEL DAVID, Bombay.**

1. To my mind there is no dissatisfaction so far as the law relating to the stranger is concerned; but as regards the marital state there is some dissatisfaction but this is not brought to light as the offences within marital state are almost undetectable. So long as husbands can commit the offence without fear of detection, there is no likelihood of expression of this dissatisfaction.

2. As regards the marital state is concerned no advance on the present law is necessary or desirable. Even if such advance is made it will serve no useful purpose for reasons stated in (1) above. As regards strangers looking to the general illiteracy and ignorance prevailing in India particularly among women, it is desirable that the girls should be protected by law say upto the age of 16. This change in legislation will conduce to better safety of the girls who have attained puberty but still remain unmarried. This will have beneficial effect upon public morals as well.

3. I have no personal knowledge about this.

4. (1—3) No, reasons same as in number 1 above.

So far as husbands are concerned it is well-nigh impossible to make law effective, as good feelings ordinarily subsist between the parties. Indian wives generally only complain in cases when the husbands become almost brutal in their treatment.

5. Girls in India generally attain puberty between 11 and 14.

6. Among very orthodox Hindus and backward communities cohabitation takes place soon after puberty and in most cases before the age of 13. Cohabitation before puberty is rare as the girls are not usually sent to their husband's place before puberty.

7. Orthodox Hindus are always in favour of marriage of girls before puberty.

J. D. Mayne in his "Hindu Law and Usage" at page 110, Ninth edition, writes—

"All the early writers inculcate the giving of a girl in marriage before she attains puberty; the father who fails to do so commits the sin of 'slaying an embryo', i.e., of preventing the birth of the children who might otherwise be born to her. According to Gautama, a marriageable maiden who has not been given in marriage may take the matter into her own hands after three months have passed and select a husband for herself. Manu, Baudhayana and Vasishtha require her to wait three years. If, however, she chooses for herself, she is not to take with her any ornaments given by her father or her mother or brothers."

Early marriages take place on account of religious beliefs of the orthodox Hindus and among other castes and creeds also such marriages take place on account of ancient custom.

8. Garbhadan ceremony is common among many castes of Hindus and usually performed immediately after puberty. I believe it coincides with consummation of marriage.

9. I do not consider attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage. I consider 16 as the proper age for getting a girl married.

10. 16 years.

12. Yes. Early child-bearing weakens the health of girls and this is bound to affect the health of her children. A child mother cannot give birth to strong and intelligent children.

13. Not to my knowledge.

14. Yes. A Hindu son does not after his marriage separate from his parents but continues joint. The mothers therefore desire to have a daughter-in-law as early as possible as they believe, that it enhances their importance particularly in the family and in their society in general.

15. It is difficult to determine the age of a person correctly. The difficulty can be minimised by more perfect system of a birth registration.

16. I do not think that the margin of error will be minimised if the Age of Consent is raised to 14 or above.

17. In my opinion the difference in punishment as existing under the present law is sufficient.

18. No.

20. Fixing higher Age of Consent for marital cases is not likely to be effective at all. Fixing the minimum age of marriage for girls may have better effect but as this kind of legislation is surely to wound the religious feelings of orthodox Hindus, legislation of this kind ought not to be attempted.

21. In order to secure the object in view I prefer to rely only on social reform. As is well known it is the principal of legal jurisprudence that legislation is the outward expression of the ideas sanctioned as just and equitable by society. Practice always precedes law and therefore unless society advances enough to accept the law as just legislation will be of no avail. I do not think that India has sufficiently advanced to accept the legislation fixing the minimum age of marriage.

22. In conclusion, I submit that the Age of Consent for extra-marital offences may be raised to 16 but so far as marital offences are concerned the present law should remain unchanged both as regards ingredients of the offence and the punishment therefor.

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**Written Statement, dated the 12th August 1928, of Sir JUGMOHON-DAS YURJIWANDAS, Kt., Bombay.**

1. There is a feeling that the Age of Consent should be raised and that the differentiation between the age in marital and extra-marital offences done away with.

2. The circumstances that justify an advance are that there has been a better spread of public opinion among educated classes, and the age may be raised without fear of much discontent.

3. These crimes are no doubt frequently committed. I think the statistics of cases that come to Court are not a proper index, because many cases do not go to Court at all through fear of being exposed, and in marital cases seldom a case goes to Court. The raising of the Age of Consent would certainly act as a deterrent and in that respect it may be taken to be slightly successful. The whole thing depends upon the surity of detection and the success with which offences are proved. I would urge the more rigid and thorough administration of the law for the purpose of reducing the number of these offences.

4. The reply is almost the same as above.

5. 13 to 14 years. In cities and leisured classes it is earlier than among the working classes living in villages.

6. As a rule, girls are married before fourteen, in a few instances sixteen. It is difficult to lay down the lower line; but I think that wherever girls are



married at 10 and 11 cohabitation before puberty though not quite absent, is not very prevalent, while it begins on attaining puberty soon after.

7. Yes, to a certain extent. Illiterate and ignorant people think that it is sinful to postpone marriage after puberty. This belief is not prevalent among educated classes.

8. Nil.

9. No. Eighteen years is the age which I consider to be proper.

10. Fifteen years.

11. I have heard of many. I cannot give exact details.

12. Yes, decidedly.

13. Among educated classes it is so.

14. I do not think.

15. I would suggest compulsory registration of births.

16. Yes.

17. I would abolish the differentiation of ages for cohabitation in the two offences. I am satisfied with the different punishments for the two offences as they are at present.

18—19. I have no experience.

20. To prevent and penalise early marriages is by far the easier method; but these cannot be done upto an age, which we would consider as safe for permitting cohabitation. I believe marriage before fourteen years can safely be penalised and after that we may fix up a higher age for consent. The first remedy is more in consonance with public opinion, upto a particular age, say fourteen years. An attempt to carry it further would rouse discontent.

21. I would use all the means. There is interaction between all these and therefore I am not opposed to legislation. I believe social reform is impossible in certain cases without the aid of State action.

### Written Statement, dated the 13th August 1928, of Lady LAXMIBAI JUGMOHANDAS, Bombay.

1. Yes, the Age of Consent is much below than what it should be.

2. I advocate an advance on the present law on the ground that in the first place, I do not consider fourteen years to be the proper age for a girl to be able to consent to cohabitation with a full understanding of the consequences. Secondly, the present limit is kept simply with a view not to be in too much advance of the public opinion. That is now changing and I believe, that we can now safely increase the Age of Consent to sixteen years.

3. I am not conversant with statistics, but I do believe that quite a large number of offences occur and the number of the cases that come to Court is only a small one, as compared to offences actually committed. The amendment of 1925 must have had some effect in reducing the number of offences; but that depends upon the efficiency with which the law is administered. Rigid application of the law seems to be the only way, besides educating public opinion, to make it effective.

4. The amendment of 1925 may have had some effect in postponing marriages on the margin of 13 years beyond that I do not think it has made any difference with regard to girls, who are married much earlier than thirteen years. Such cases do not come to Court and I believe that is the chief difficulty in this matter. I must repeat that a rigid application of the law will have a very healthy effect, though in the beginning it may create some trouble. Of course, other agencies like propaganda and spread of education are essential. I also hold that in India legislation itself tends to stimulate public opinion, and therefore even in that respect, it is useful.

5. The age of puberty arrives at different ages in different communities. Among working classes it is a year later than among the well-to-do, where generally thirteen to fourteen years is the age. It seems that in town population puberty is attained earlier than in villages.

6. Yes; in all the three cases, except among educated people, most of whom are dwelling in the cities. One may put down thirteen years as the age from which cohabitation generally begins. I do not think these cases come to Court.

7. It seems among illiterate people such is the notion, created out of social tradition. I do not however think that it has its roots deep in sentiment, because I have known even orthodox people postponing marriages of their girls for want of suitable bridegrooms. The penalty prescribed by the rule of marriage before puberty is that the guardian is supposed to be committing sin. I however, am not inclined to attach any importance to that sentiment or belief.

8. Garbhadan ceremony is performed among some communities. It generally takes place on attainment of puberty.

9. Decidedly not, sixteen years is the least I would consider sufficient for consummation; if public opinion be more advanced I would go even further

10. At sixteen to seventeen years.

11. I can give only a general answer. I have known of some instances, but I cannot give exact details.

12. Yes, decidedly.

13. Public opinion is slowly but surely developing, and in my opinion the policy should be to amend the law from time to time. We may now well make an advance on the amendment of 1925. About villages I cannot definitely say, but even there the Penal Law has certainly some deterrent and educative effect.

14. I do not think it is so, till the girl attains the age of, say, fifteen or sixteen years. After that I should think, that is the case.

15. For any difficulties in this regard I would urge the necessity of enforcing the system of registration of births. It is extremely necessary for many other purposes also.

16. Yes.

17. The law as it stands is quite satisfactory so far as differentiation in punishment is concerned. I do not however favour any difference in ages for cohabitation in marital and extra-marital offences.

18. I have no experience.

19. I cannot say.

20. First of all marriages below a minimum age must be penalised. Beyond that, say after the age of fourteen years for girls the Age of Consent may be raised to prevent cohabitation. Prevention of marriage up till a particular limit is more in consonance with public opinion.

21. I do not think that the two means are antagonistic and exclusive of each other. Both must be used. As I have already stated in India legislation will have to be resorted to for effecting social reforms and therefore I would urge the use of all the agencies.

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Written Statement, dated the 13th August 1928, of Mr. LAXMI-SHANKAR REWASHANKAR TRIVEDI, Bombay.

1. No. Not in our province.

2. The current belief of the Hindus is based on Dharma-shastra which make it a religious duty for consummation of marriage after the girl arrives at puberty. As the girls in our part of the country generally reach

puberty at the age of 13 there would be no necessity of changing the present law as the same would be in conflict with the Hindu Dharma-shastras.

3. No.

4. (1) Yes. By postponing the consummation of marriage within the prescribed age limit, in villages.

(2) Yes. By stimulating public opinion in that direction everywhere.

(3) No. The law as amended is sufficient and no further steps are necessary in my opinion to make it effective.

5. Between 12 and 14. Not material.

6. (i) No.

(ii) Yes. Soon after puberty.

(iii) No. With the exception of rare cases.

No.

7. There is no consummation of marriage before puberty but such consummation takes place soon after puberty as there is religious injunction to that effect. I here rely on Manu Smriti 345 in support of my views. Not only so, but there are religious ordinances which ordain that if a man does not consummate the marriage of a girl who has already attained puberty shall be guilty of the crime of child-murder. I rely on Parashara Smriti 415 and Gautama Smriti 218. Heavy penalties are given in the Manu and Parashara Smriti for the above sin.

8. Yes. After consummation of marriage and after the attainment of puberty the garbhadan ceremony is performed only when the married girl conceives, that is generally in the 6th or 7th month of pregnancy.

9. It depends upon the individual cases. In my opinion there is no direct relationship between consummation of marriage and age of the girl. The desire for consummation of marriage depends upon the physical development and puberty of individual girls. Generally puberty is attained when the girl completes 13 by which time she has menstruation. Unless a girl is exceptionally weak in health I do not think any further physical development is necessary after the girl has attained puberty to justify consummation of marriage without injury to the girl and to her children.

10. When she attains puberty, *i.e.*, generally the age of 13 complete.

11. I have not come across with any such cases.

12. To some extent only; as there are various other causes to bring about the said results.

13. No. Except in the case of a few social reformers here and there.

14. No. They favour consummation, only at puberty and thereafter.

15. Yes. It should be made obligatory for parents to obtain certificate of birth from the Municipal and Public Registries before performing marriages of girls.

16. I do not think so.

17—19. Nil.

20. Legislation fixing the minimum age of marriage would be in consonance with public opinion in preference to penal legislation fixing a higher Age of Consent.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda rather than strengthening of the penal law to secure the object in view.

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**Written Statement, dated the 13th August 1928, of Mr. MOHAMAD YUSAF KHATKHATAY, Bombay.**

1. According to the Mohamedan Law of the Hanafi School, the earliest age for puberty is twelve. However in this part of India it is surmised from experience to be attained between the ages of 13 and 15.

As the Mohammedians forbear from the consummation of marriage of female pubers under thirteen, having regard to their age, there has been no effect of the legislation upon them. They were rather dissatisfied that legislation had interfered with the liberty given to them by their religion which they counter-exercise in proper cases, especially in cases of orphans and in cases of girls of poor parents where a suitable boy is ready to marry a young girl.

2. The present law is sufficient and I see no reason for a further change.

3. There is no increase in the offences and the present law has a deterrent effect quite sufficient.

4. (1) Refer to Nos. (1) and (6) please.

(3) Generally consummation before the age of 13 was postponed and the amendment had no effect in the marriages of girls under 13. I never heard that a girl's marriage was postponed because she was under 13.

People were not generally acquainted with the law. Had there been cases of marriages under the age of 13 and prosecution instituted for consummation and people coming to know of the same prevented such marriages, it might have been possible to say that the law had produced its effect.

5. Puberty is usually attained by a girl between the ages of 13 and 15. Affluence causes early puberty, poverty the reverse. In families the members of which attain long life puberty appears late.

6. Mohamedans generally do not consummate marriage before the puberty of the girl, nor before the age of 13.

I do not think any case, with Mohamedans for its parties has gone to the Court.

7. There is no such injunction, nor any penalty in the Mohamedan law.

8. There is no such custom amongst the Mohamedans.

9. Generally puberty is considered to be such a proof. Though in cases of weakness consummation is postponed.

11. I have not come across such cases.

12. Yes, so far as it relates to the immature development of the girl and the consequent difficulty of nursing the child.

14. Yes, on account of their anxiety to preserve the chastity of the girls. Modern conditions of life and the necessity of living in houses where a large number of tenants live in the same building make them the more anxious to get their girls married early.

13. According to Dur Mukhtar marriage is "Sunna" for a person feeling sexual desire and it is sin for him to forbear. So a parent cannot postpone the marriage of such a girl and the consummation.

16. The difficulties and errors will decrease as a logical result from the raising of the age. But that is "Cutting the Gordian Knot".

19. No.

20. The former is more effective. But I am against both.

21. Education and social propaganda will suffice.

**Written Statement, dated the 14th August 1928, of Miss NAWAJBAI D. CONTRACTOR, B.A., J.P., Lady Superintendent, The Chanda Ramji Girls' High School, Bombay.**

2. I am emphatically of opinion that the Age of Consent outside marriage should be presently raised to sixteen, with a view to raise it ultimately to eighteen.

Examining the question, first, from a purely legal stand-point, there ought to be the least hesitation in raising the age. The Indian legislature has wisely fixed the age of minority to end at the expiration of the eighteenth year (see Section 3 of the Indian Majority Act, IX of 1875). It has been

held by the highest Court in the realm that a civil contract entered into by a minor is void (see *Mohori Bibee vs. Dhurmodas Ghose*, L. R. 30, I. A. 114). It is difficult to understand why a female minor should be in a less advantageous position in the domain of criminal law. Even in criminal law, the law has thrown its protection round a female "under sixteen years of age" in the case of an offence of kidnapping (Section 361, Indian Penal Code). With regard to the offences of procuration of minor girl (Section 366A, Indian Penal Code) and selling or buying a minor for purposes of prostitution (Sections 372 and 373, Indian Penal Code) the law has protected a minor girl "under the age of eighteen years"; and with reference to importation of a girl from foreign country for immoral purposes, the protection extends to "any girl under the age of twenty-one years" (Section 366B, Indian Penal Code). It is difficult to understand why law should not offer its protection to a girl under 18 years or at any rate under 16 years—in the most heinous of offences, *viz.*, rape. There is the more reason for stringency in the last mentioned offence, because the unfortunate girl is almost always alone when the offence is committed, and has neither the advice nor protection of her parents or guardian. Owing to the deplorable ignorance on sex questions prevailing amongst young womanhood in India, a young girl below eighteen is hardly able to realise the effect of her consent in the case of rape.

As regards the Age of Consent within matrimony, the legislature should, I submit, hasten slowly. In 1890, it raised the age from 10 to 12; and the storm of protest it provoked then is not likely to be forgotten. It was only in 1925, that the age was again raised from 12 to 13. I doubt if it is not too soon to further extend the age. The slow but steady influence of education is already at work and people have come to understand the value of a prudently deferred consummation of marriage. Again, India is peopled by communities some of which have advanced enough, but there are others which are even now steeped in ignorance and centuries old prejudices. To attempt to level up all the different communities in India by an uniform piece of legislation in a frenzied hurry may not do any good but may set back the clock of progress. I may make myself clear on the point. I am not at all a protagonist of the view that the legislature should not move at all. What I am driving at is that it should not move in a hurry.

The relationship between husband and wife is more than secular in some of the communities. The ideal of a Hindu wife is depicted in the *Ramayana* as :—

"That wife to bliss celestial soars  
Whose lovely eare her Lord delights,  
Although she shuns all holy rites,  
And never any God adores."

Is it prudent for the legislature to rush into such a delicate and hyper-sensitive relationship? It should desist from wrecking the happiness of many a married couple. Let it have the goal of raising the age, but let those steps be very small and spread out over long intervals of time.

Further, in my opinion, the raising of the Age of Consent outside marriage is sure, in course of time, to react on married relationship.

4. (1) The amendment of the law has made no visible difference. It is too soon to expect the effects to follow so soon or so appreciably.

(2) The public opinion has no doubt shown progress in this direction; but I do not ascribe it wholly to legislation. It is owing to the general spread of education.

(3) Marriages are as a rule put off much beyond 13. Thirty years ago, amongst Hindus, the marriageable age for girls was 9 or 10. Now as a rule no marriage takes place amongst them before 16 years.

5. Girls generally attain puberty at 12 or 13 years. There has been no difference in this respect on the score of caste or community; though much would depend on the constitution or physical build of the girl.

6. Consummation of marriage takes place after puberty is reached; though in many cases, it is deferred much after puberty.

7. Speaking of the community to which I belong no girl among Parsis is married before 16 years.

8. No "garbhadan" ceremony as a rule performed in Guzarat or among Guzarati speaking communities in Bombay.

9. I would not generalise and say that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. All prudent mothers know this too well. It all depends on the build and development of the girl.

10. Not before 18 years of age.

12. I do consider that imprudent consummation and early maternity very often result in ruining the health of the mother and child, and often result in their untimely death. Such a mother and child are very often hopeless imbeciles, and become a curse to themselves and a burden to others. Young mothers are not even able to bring up their own children.

14. Women have continued to advance in their ideas of the proper time of consummation. My experience is that as a rule women have shown much intelligence in understanding and putting into practice what is best for their daughters.

17. As I have mentioned, I am not in favour of the legislature moving in haste within matrimonial arena. I do not prefer a separate section as proposed by Section 376A. The comprehensive Section 375 is quite enough.

20. I would leave the age of matrimonial consent quite untouched for the present. On no account, I would place any fetters on the marriageable age of girls. To do so might prove disastrous in many communities, under the present state of things.

22. I would rely both on direct legislative action, and on the silent influence of social reform and education. I would strongly urge that legislation ought not to proceed at a pace so as to provoke irritation. Let the ground be first prepared by the permeation of social propaganda; and let the legislation proceed in its wake pace by pace as demanded by the awakened conscience of the people.

### **Written Statement of Lady LUXMIBAI JUGMOHANDAS on behalf of Gujerat Hindu Stri Mandal, Bombay.**

1. Yes, we consider the Age of Consent to be considerably lower than is necessary.

2. We suggest making an advance on the present law for the following reasons:—

(1) Sexual intercourse must not be permitted at the age of 14.

(2) The law of the age of 14 has been maintained, because public opinion has favoured it with a view to avoiding the difficulty of the law being disobeyed in the event of a higher Age of Consent being fixed.

(3) It is our belief that the public opinion has changed now and no objection is being raised against the extension of the Age of Consent.

3. We do not know of the particular instances of such crimes but we believe that they can be found in a greater number than usually appear in Courts. The amendment of the law made in 1925 may have been effective to a small extent but that too depends upon the law being strictly enforced. The only effective measure, in our opinion, seems to lie in the spread of education together with the strict enforcement of the law.

4. The amendment of law made in 1925 might have, to a certain extent, benefitted girls of the age of 13 or so but we do not think that it has bene-

fitted girls married at a lower age than that. It is true that the cases of this type do not figure in Courts but that is the main difficulty about them. We therefore repeat our remark that the strict enforcement of the law will bring about better results, though at first there is possibility of difficulties arising in the beginning. Spread of education and an awakening in the public opinion are necessary; besides legislation educates public opinion and we believe that it is desirable for this reason.

5. Girls of different communities attain puberty at different ages. Among well-to-do people it is observed that girls attain puberty at the age of 13—14; while those of the labouring classes, a year later. Climatic conditions largely influence, since girls living in towns and cities attain it earlier than those living in villages.

6. Cohabitation is common among persons other than those who are educated and live in cities. We can safely say that in all these cases marital relations are entered upon after the age of 13. No cases relating these come to the Court.

7. No doubt illiterate people attribute the early consummation of marriage before or at puberty to religious injunction, but we refuse to believe that it is due to any feelings of heart. The belief of such an injunction can be ascribed to long-standing social conventions. We know of many instances where orthodox people have not seen objection in keeping their daughters unmarried beyond this age since they cannot find suitable husbands. There is a belief prevalent among the illiterate classes that to keep girls unmarried for a long time after attaining puberty is considered sinful. This belief ought not to be respected and may be ignored.

8. Yes; the garbhadan ceremony is usually performed among certain communities after the marriage when girls get puberty.

9. Surely not; we do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Considering the public opinion at present, we opine that age of 16 may be taken to justify consummation of marriage. If public opinion would favour it we would advocate a still advanced age.

10. A girl in India, would be able at the age of 16 or 17 to give an intelligent consent to cohabitation with a due realisation of consequences.

11. Generally we have come across several cases in which cohabitation before or after puberty, but before full physical development of a girl, has resulted in injury to her health as well as to her progeny. We are unable to give details of age and injury sustained.

12. We do consider that early consummation and early maternity are responsible for high maternal and infantile mortality.

13. Gradually there is a further development of public opinion in favour of the extension of the Age of Consent. We think the law should be so amended as to keep pace with the development of public opinion. Time has come when, we think, an advance should be made on the amendment of law made in 1925. We cannot definitely express our opinion about the rural parts, but with the enforcement of law, the public opinion is bound to develop there also.

14. We do not think that women favour consummation of marriage before the girls attain the age of 15 or 16.

15. To cope with the difficulty, we think that every birth should be registered. It is essential that the law should be faithfully followed in this respect.

16. Yes; the difficulty or margin of error in determining the age will be materially reduced if the Age of Consent is raised to 14 years or above.

17. The existing punishments for such offences are proportionately satisfactory. Whether married or unmarried, there should be no cohabitation below the age of 16.

18—19. We have no experience and cannot say.

20. Legislation should be enacted to put a stop to consummation of marriages before a certain age, say for instance before 14. This will be more easy and effective than making the penal legislation to fix a higher Age of Consent for marital cases.

21. We do not think there is much difference between the two methods. We for ourselves would advocate the utility of both. As we have mentioned above, legislation also educates public opinion, hence the necessity to make use of both the methods.

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**Written Statement, dated the 14th August 1928, of Mr. D. M. RANADIYE, B.A., Huzur Deputy Collector, Thana.**

1. I have not noticed any dissatisfaction with the state of the law as to the Age of Consent as stated in sections 375 and 376, Indian Penal Code. (Reasons seem to be that the prevailing circumstances and the progress of thought are already postponing the marriage age of girls and boys, and thus no ground for dissatisfaction is being felt); and in the case of extra-marital rapes people have not only no dissatisfaction but will have no objection to raise the limit of age of the girl quite upto eighteen.

2. I am in favour of making advance in the present law; my distinct proposals in this respect are to render "consummation" before 15 or even 16, a rape by the husband, and before 18 by a stranger. These steps are justified in my opinion for the following reasons:—

I do not think that a girl of average health is really fit for consummation, before she is eighteen probably. Thus presently they have an over-early life and seem losing the health, and to be drinking the cup of life before their age; and their children sickly pigmies, prevailing anxiety both for the girl-mother and the child, and such girl-mothers and their children cannot be anticipated to hold much hope for their own good or their homes or their country. The law will strengthen the hands of our social workers who have to move a very dull mass corrupted by degeneration of ages. In respect of raising the girl's age to 18 for the extra-marital rape, the idea is suggested to me by the age-limit at which a girl is considered fit for a contract. I think if 18 is really a proper age for an agreement or a contract, anything less than this for an intelligent consent to illicit course, is not sufficiently effective in checking the evil.

3. I cannot say seduction and rape are frequent in the Thana District, where I am working just now; but I did find it considerably more in other places where I worked (in Kaira District, Guzerat where more cases of seduction followed by rape received in my Court (Nadiad). I have not noticed appreciably that the amendment of 1925 has effectively succeeded in reducing cases of rape outside the marital state. I am afraid they have not, this is because probably those who are found to commit the offences are an ignorant class who are not aware of the law or its amendment; raising the age-limit of consummation to 18 full in this respect and nothing less is a remedy I can propose for checking the evil, however.

4. I do not believe that in this part of the country at least (*viz.*, among the high caste as well as the low class or the cultivators) consummation takes place before 16 or so; because to my knowledge, the marriages among the town-living high caste people do not take place before the girls are 15 and more; and no fear of consummation before about 16 is possible. This has been the state for the last 10 years and more; with regard to the backward classes, although several of them marry girls early, the consummation is case is not less than 15 or 16. Under these circumstances it is not appreciably the amendment of 1925, which gives a special protection to the maratli speaking girls of this district at least; their long standing customs have been able to protect them. These customs of the vast mass upheld from time



to time in the midst of a homely innocent and genteel life, in spite of poverty, have preserved the habits of self-control in the villages at least, and I do not believe that an average son or son-in-law of a cultivator has cohabitation with his wife before 15 or 16.

My replies to 4 (1, 2, 3) are as follows:—

4. (1) The consummation of a marriage is being postponed by the postponement of marriages.

(2) I do believe that public opinion was stimulated by the 1st Age of Consent Act and kept up by the act and amendment. But the idea was given by the great public spirited souls like the late Dr. Sir Ramkrishna Bhandarkar and others and Government were kind enough to support and strengthen their hands by legislature and do believe further that if legislation does not support any big soul's great idea in this country, the mass not being very homogeneous though good and genteel in spite of poverty, might still drop into slackness towards progress.

(3) I cannot say regarding this that it is amendment—or amendment only at least which has resulted in postponing marriages; other much stronger forces being at work also, *viz.*, the desire to live a better life, and the strain of circumstances making it exceedingly hard day by day to lead a married life; this is particularly so among the awakened and progressed people; 'marriages' are postponed amongst these communities from 10, 11, 12 of the old time to 15, 16, 17 now and even more:

5. Fourteen to fifteen is the age of puberty (in town societies) and 15 to 16 for village communities. But for the Guzarati population, it is probably earlier, *i.e.*, about 13 years

6. (1) Cohabitation is not allowed before puberty.

(2) But is not sufficiently guarded after puberty, and is I believe freely allowed particularly in village societies.

(3) But does not seem to exist before 13 years. No case of rape of girl of less than 13 has come to my Court during my magistracy, in the Thana and Surat Districts, or even in the Kaira District, which was a highly criminal district when I worked as a Resident First Class Magistrate in 1918.

7. I am not aware of any injunctions in my Hindu religion, directing early consummation although Manu and Yadnavalkya give *marriage ages*.

8. The garbhadan was originally performed three years after puberty; and not before in any case. But its medical and religious importance came to be ignored after time, and it came to be performed even much earlier and even soon after puberty: and thus the consummation was drawn much nearer to the time of puberty and as this ceremony sanctioned consummation of marriage, the evil effects (of early consummation) naturally followed.

9. I do not consider that attainment of puberty is a sufficient indication of the physical maturity to justify the consummation of marriage; as a layman (*i.e.*, knowing no theories of medicine), I believe that consummation after two years or so after puberty will probably be justifiable without injury to the girl or her progeny. I presume that the old ceremony of garbhadan which was held three years after puberty shows the ancient medical opinion regarding the question. But in this respect medical experts, doctors and lady doctors of this country can be consulted with advantage.

10. At the above said age, *i.e.*, 2 or 3 years after her puberty a girl in India should be able to give an intelligent consent to cohabitation with consideration of consequences. This will be not less than 17 and need not be more than 18.

11. No case of the kind has ever come before my Court as a First Class Magistrate, in the Thana, Surat or the Kaira District.

12. I do consider early consummation and early maternity responsible for a part of the high maternal and infantile mortality and other results affecting the physical and intellectual progress of the country; but I do not believe the high mortality to be due wholly to early consummation; since I

presume consummation to be earlier in some provinces than in Marathi countries and mortality among their women or children to be less than in Marathi Districts. They are a thrifty and well-to-do people with the earning profession of trade, able to keep their wives and children on better living and as a result, the girls are able to bear the strain of early consummation better.

13. There has been a further development of public opinion in the towns. I cannot say it is confined to towns only; but still it has not been general.

14. In towns at least the race of women who took interest in such a matter has probably disappeared; in villages it does appear to exist, though not possessing half the zest of their mothers-in-law of old.

15. Difficulty is sometimes experienced by the Court in ascertaining the age; particularly because a Civil Surgeon does not himself examine the girls raped or at least does not himself come before a Court for being examined; and a Sub-Assistant Surgeon's opinion and a statement do not appear very valuable and is sometimes suspected. The remedy is that in cases of serious crimes like these the Civil Surgeon should be required to do personally what he is getting done by Sub-Assistant Surgeon.

16. The difficulty will be removed by postponing marriage itself, and not so much if the Age of Consent is raised to 14, or even 15.

17—18. Yes. I would propose to continue the separation between the marital and extra-marital rapes so far the punishment is concerned, otherwise the present procedures require no modification. I have nothing to say against the punishment to the extra-marital culprit; he ought to have it in the interest of society; in the marital rape if the Age of Consent is raised, I would also simultaneously propose that the present punishment may not be raised.

19. As no case of a marital rape has come to my Court, I have had no occasion to study the sufficiency or otherwise of the precautions in such cases; but in regard to the extra-marital rapes, inquired into by me and committed to the Sessions Court till this time, I have felt at times that no Sub-Assistant Surgeon should be allowed to examine the girls for their ages; and the Civil Surgeon's examination and in absence of that private medical graduate practising in towns are more reliable. So the law may be amended in this respect as to make it compulsory to the Civil Surgeon only to personally examine the girls for their age. For injuries the local medical officers may immediately examine or have examined by women, the girl sent for examination by Police. The Police should be required to have them re-examined as soon as possible by the Civil Surgeon also.

20. Legislation fixing the age of marriage will really strike at the root of the existing evil and not only penal legislation fixing higher Age of Consent for marital cases: but public opinion is not I am afraid, ready for postponing marriage quite upto 17 or 18 except in towns and the few forward people of the villages; and will not consequently like also to raise the Age of Consent to more than 15. My reason for believing so is as follows:—

'The existing evil in my opinion consists in early consummation after puberty, though not before puberty just when the girl has entered only a new phase of life, but is not fit for consummation: and any amendment which directly attacks this will be looked upon with apprehension as the original bill was several years before; but as advance must be made in the interest of these very people who would be apprehended, the minimum age should be at least 15 or 16 for the present.'

21. I believe in this respect that penal law will be required so long as the people have not fully carried out the required change which means "not marrying the girls until they are ready to bear the strain of consummation without the fear of injury to themselves and their children; but people will not carry out the change so long as they are kept away from education and progress. I rely much upon the education and progress securing the desired object, rather than law. The hardest law will but punish one out of 100 crimes, exposed, in a society which is without education and has no incentive to improve itself.

**Written Statement, dated the 14th August 1928, of Dr. Y. G. NADGIR, M.S., F.C.P.S., Professor of Anatomy, Grant Medical College, Bombay.**

2. I am in favour of advancing the age of consent to 16 at least for the following reasons:—

- (1) A girl is not sufficiently advanced mentally before the age of 16 to realize the consequences of her act.
- (2) All persons under 18 are considered as minors legally and incapable of exercising independent judgment in their dealings. It is therefore absurd to presume that a girl of 14 would be competent to exercise her judgment correctly in such an important matter as giving consent to a sexual act, which might seriously affect her whole life.
- (3) Public opinion is now sufficiently advanced and the consensus is in favour of advancing the age. This specially applies to the educated classes.

4, 5, 6 and 8. I am familiar with the conditions obtaining in the higher classes in Bombay, Deccan and the Karnatak. The age of puberty varies in individual cases but the average may be taken as 13. It does not materially differ in the different communities.

During the last 20 years owing to the spread of education and increased struggle for existence, the marriageable age of girls has distinctly advanced. Before 20 years it was unusual to find unmarried girls above the age of 12. Things are now quite different. The average marriageable age is now 14 and several girls attending schools and Colleges remain unmarried even up to 18 or 20. The old idea that the girl must be married before she attained her puberty has become extinct.

The so-called marriage ceremony is really equivalent to a betrothal ceremony. Cohabitation takes place invariably after a second ceremony known as "Garbhadhan". Garbhadhan ceremony is always performed after the girl has attained her puberty. The interval between the consummation and the attainment of puberty varies but in any case it is not less than 16 days.

9. I do not consider the attainment of puberty as an indication of physical maturity. It should rather be considered as one of the series of changes which ultimately lead to physical maturity. Although full physical development is not attained until the age of 25, for all practical purposes 18 may be considered as the age of maturity. By that time many of the important bones including the Pelvis have attained their full development. Consummation at the age of 18 would involve no injury either to the health of the woman or her progeny.

10. The answer is already given (See answer to question 1) 18 would be an optimum age, but if this is not possible to enact, it should be at least 16.

12. Although early maternity is partly responsible for the high maternal and infantile mortality, the main causes are poverty and ignorance.

15. It is already very difficult to determine the exact age of the girl in many cases. This difficulty will be enhanced when a medical officer will be called upon to determine the age in cases in which a girl is supposed to be above 13 but under 14, (according to Sir Harising Gour's amendment). Unless accurate birth records are available (these are not forthcoming in many cases), it is impossible to determine the exact age. To my mind the best would be to have separate enactments for marital and extra-marital offences. The age of consent for extra-marital offences should be raised to 18. From an X-ray examination of the bones, it would be possible to determine whether a woman is about 18 years, as several important bones develop completely at that age.

20. I am definitely against penal legislation fixing a higher age of consent for marital cases. The public opinion is decidedly against outside interference in matters relating to marriage. It would be difficult to elicit the requisite information in marital penal cases. On the other hand legislation raising the marriageable age would be welcomed by the enlightened public.

21. I entirely concur with the view that social reform can only be achieved by means of education and social propaganda. The less the interference from the state in social matters the better for all concerned. There is however no objection to legislation in cases where enlightened public opinion is crystallized.

### Written Statement of Mr. N. B. DIVATIA, C.S. (Retired), Santa Cruz, Bombay.

*Prefatory.*—I must remember in answering the questions of the Committee:—

That India is a vast continent with a heterogeneous population having varying social customs and ideals, and even in every province the people divide themselves mainly into two categories:—(1) the masses with limited education and inferior ideals and (2) the classes with superior enlightenment and higher ideals, and even the latter class shares, in several ways, the weak points of the former.

Then, again, rural areas are superior to urban areas in matters of marriage conditions on account of their unsophisticated and innocent social atmosphere; though in some cases the people of rural areas try to imitate those of urban areas in matters regarding marriageable age of girls.

Again there are certain castes in Gujarat which are wedded to the custom of child marriage to an unimaginable extreme.

Keeping the above considerations in view as axiomatic facts, or, as postulates, here are my answers.

1. Yes. There is a certain amount of dissatisfaction with the law on this point, amongst a large number of enlightened persons. True, education has advanced and with it the ideas on social customs have become more liberal than hitherto. This very factor should automatically put off the age for marriage, and consummation of marriage. And yet, paradoxical though it may appear, that very factor conduces to a desire for raising the age of consent further than at present, witness the numerous meetings held of late, meetings entirely composed of women calling for such raising of the age of consent.

2. In view of the fact that public opinion has advanced in favour of raising the age of consent and also the fact that there is a decided advance in favour of late marriages. I think an advance in the present law about the age of consent is justified. It may be contended that if people are for late marriages of girls, there is no necessity for raising the age of consent, there being no use left for any legislation in that direction, if, for instance, girls are generally married at or after the age of 16, no occasion would arise for punishing an act of consummation of marriage before the girl is of 14 years. This contention can be easily met by the consideration that there is a moral deterrent element in such legislation in case where the parents yield to the temptation of an earlier age period and of the husband taking advantage of the absence of such legislation. Besides, exceptional cases must be provided against by such legislation.

4. It is rather difficult to answer this question without the help of statistical figures, and after the short interval of three years since the amendment of 1925. But from a general impression of the state of things in society, one can say that the result of the amendment was found to be effective in all the three directions mentioned in this question. And for this very reason, I would advocate a further raising of the age of consent to 16

years of age, on other grounds to be mentioned in answering questions that follow.

5. In Gujarat (which is my province) girls attain puberty at an age which varies from 13 to 16 according to social, educational and other surroundings. Such age differs in different classes depending as it would on physical conditions (e.g., working classes will show later puberty than classes living in luxury), social ideas and associations.

6. Cases of cohabitation before puberty are few and far between; those of cohabitation soon after puberty fairly general, though there are distinct signs of gradual postponement of such acts. Cases of cohabitation before the girl completes 13 years are rare, as a rule.

It is very difficult for cases of this kind coming to Court. For one case of the kind coming to Court, 99 will remain in the dark. Unless there is serious physical injury to the girl, there is a decided aversion to court publicity in such matters. This feeling of aversion prevails even in cases of serious physical injury.

7. The practice of early consummation of marriage before or at puberty, where it exists, began, perhaps, as an act of obedience to religious injunction of very dubious authority, but in course of time the practice is the result of mere imitation and custom. Very few ever dream of such injunction. It was only trotted out by bigoted orthodox persons during the heated controversy which raged round the Age of Consent Bill of 1891. The authorities then cited were onesided and in conflict with other injunctions holding forth better ideals. The penalty for a breach of such injunction was not temporal but spiritual. For instance, it was laid down in one place that the father of a girl who should attain puberty at her father's house, would be condemned to hell after death. It was argued, therefore, that girls should be married away and sent to their husbands *before* they attained puberty. Detailed inquiry into the value and reliability of such authority is unnecessary here. I discussed it during the controversy in 1891 A. D.

8. "*Garbhadhana*" ceremony is not in vogue in Gujarat. There may be rare cases of this in very orthodox families. It is generally performed in such cases on the fourth day after first attainment of puberty.

9. I do *not* consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Before stating my view as to the proper age for such consummation, I may with greater weight cite one or two authorities:—

I. Dr. Mrs. Pechey-Phipson in her then well-known lecture in 1890 A. D., declared, with good authority to support her, that—

- (a) Menstruation and real puberty are two distinct things, the latter follows some years *after* the former;
- (b) Menstruation is an indication of a *capacity* for child-bearing, whereas puberty indicates *fitness* for it; and
- (c) the proper age for consummation of marriage is 20 for a girl, when all her physical parts, bosom, pelvis, muscles and bones attain full development.

II. Kirke's "*Hand-Book of Physiology*" tells us that menstruation is a sign, one of many signs, of the *beginning* of puberty, and that it is more a sign indicating capacity of pregnancy than one of fitness for it.

III. During the trial of the well-known case of Fulmani Dasi in 1890, Dr. Joubert stated:—

"By attaining puberty I do not mean a sudden event, but a process spread over months or years. The commencement of menstruation is one of the steps, though it may be delayed. In my view, puberty is not generally attained upon menstruation but subsequently."

Bearing these views in mind, and at the same time considering the present circumstances of society, I would not advocate the extreme limit of 20 years, advisable though it is as a goal to be attained, but would suggest 16 years as the age for consummation of marriage. This is a safe limit providing against injury to a girl's health and that of her progeny.

10. An Indian girl, in my opinion, would be competent to give an intelligent consent to cohabitation with a due realization of consequences at the age of eighteen years. I base my opinion on the following consideration:—

- (a) Consent is a mental and moral act, unconnected with the question of physical development;
- (b) a girl's mind is not so fully developed and enlightened before the age of eighteen as to calculate truly the value of the consequences of cohabitation; and
- (c) the first flush of physical desire requires to be controlled by moral considerations; such a control is not possible before the age of eighteen.

12. Yes; I do consider early consummation and early maternity responsible for high maternal and infantile mortality, and for the slow progress of the people intellectually and physically.

This requires no proof. Evidence is visible all over the country, negative and positive. I have known number of cases where premature consummation has ruined the constitutions of girl-mothers, where it has not resulted in early mortality, and has been the cause of feeble progeny, when the infants have not died early. On the other hand, late consummation has, to my own knowledge, conduced to robust health in the case of mothers and well-developed off-springs. The latter condition belongs to a minority of our population; and hence we see our national backwardness all round.

13. Public opinion has advanced in Gujarat (including Bombay) in favour of the extension of the age of consent in marital cases certainly, in extra-marital cases not quite so clearly, since the amendment of 1925. In a sense it is general, if the intelligent classes are taken to represent the feeling of the people. In some cases, representative meetings of women have gone far ahead of the age limit of 14, and advocated 16 and even 18, to the best of my recollection.

I would fix 16 as the age of consent for marital and 18 for extra-marital cases.

14. Yes; and No. There are women and women. All depends upon the enlightenment of views, individual and communal.

However, the number, on the whole, will form a minority, a very small minority now, of mothers wishing for early consummation of marriage for their daughters.

(I assume that the word "children" in this question stands for "daughters".)

17. Although at the first blush very little reason can be conceived to distinguish between marital and extra-marital offences, it is possible to imagine the object underlying the distinction made by the legislature initially. A stranger has no right whatsoever to outrage the sanctity of a woman's person, whereas the husband has the privilege of familiarity. Then, again, the distinction prominently contemplates the case of cohabitation with adult women. However grown up a woman be, a stranger is precluded from such intercourse with her against her will and without her consent, whereas these factors do not play the same part in the case of her husband. The law refrains from interfering behind the marital screen, unless the act falls under a different section of the Penal Code. This privilege, however, is restricted when the girlwife's tender age has to be protected against violence even by the husband. It is this tender age which has had to be shifted upwards from time to time with the advance of education and enlightenment of public opinion. }

For these reasons I would separate the two kinds of offences into two different offences, a stranger's act, being made punishable more heavily than that of a husband.

18. Yes. I would make offences within the marital state non-cognizable and bailable; and these without the marital state cognizable and non-bailable.

The reasons are obvious. A stranger is not easily accessible to the Police, a husband is. A stranger may decamp after the criminal act, a husband generally cannot. The former has nothing at stake, the latter has every thing.

Again, I would make the stranger's act triable by the Court of Sessions, that of the husband by a 1st Class Magistrate or Presidency Magistrate.

Further, I would make the trial of an offence within the marital state triable *in camera*, the other one so triable at the option of the Court.

20. I consider that penal legislation fixing a higher age of consent for marital cases will be more effective than legislation fixing the minimum age of marriage. The reason is that the former (penal legislation) has a direct reach which the latter has not. It is possible that the latter alternative can be circumvented by the parties in a number of ways. The marriage can be performed outside British India, or the legal consequences may be more readily faced, *e.g.*, if the marriage is to be regarded as null and void the children born of it may be made the subject of gift, or, if there is a fine attached to such marriage, such fine may be willingly paid by those who spend large sums on weddings and the like.

However, I would let both the alternatives be adopted so as to work their effect simultaneously as there would be no conflict between the two.

21. I would rely on both. We need not wait for the progress of social reform by means of education and social propaganda. They are factors that work conjointly, act and re-act mutually, witness the history of the cause during the last half a century. The one is needed to strengthen the efficiency of the other. Legislation serves as a silent weapon which supports the cause of reform. On the other hand the presence of social reformers in the legislative Councils and Assembly, initiates and hastens social legislation, and softens the aversion of Government members to interference with the social prejudices and customs of the people.

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**Written Statement, dated the 16th August 1928, of Sir MOHAMUD YUSUF, Kt., Bombay.**

1. The majority of the people are illiterate and therefore no dissatisfaction is manifest.

2. I. There are no circumstances in my opinion, which can justify retaining the law of the Age of Consent as it is.

II. The Age of Consent must be raised as it is conducive to the moral, intellectual and physical advancement of the people. The present law saps the foundation of the physical structure of the human beings as cohabitation is allowed by law before their bodies are fully developed. The masses are ignorant of the consequences of their actions hence it is the duty of Government to look after their welfare by enacting such laws.

3. The crimes of seduction or rape may be few. The amendment of law made in 1925 may not have fully succeeded in preventing the crime. The only measure to make the law effective is to educate the masses.

4. The amendment will be only effective if the marriage is put off beyond 13

5. The usual age of puberty is 15. It slightly differs in rich and poor classes.

6. Cohabitation is not common in this part of the country before puberty but it is common soon after puberty. I have not come across any of these cases coming to Court.

7. As for other religions I am not aware.

8. The Garbhadan ceremony is usually performed in this part of the country among the Hindus. It coincides with consummation of marriage. It is generally performed within a month or two after the attainment of puberty.

9. I do not at all consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I think three years after maturity are quite necessary for the full physical development of a girl. If at the age of eighteen the consummation of marriage takes place it will not be injurious to her own health and that of her progeny.

10. At the age of 18.

11. I have come across cases in which cohabitation just after and before her body is fully developed, has laid to serious consequences. It resulted into conception which undermined her health and consequently she fell victim to consumption leaving very weak children behind her.

12. I consider early consummation and early maternity are responsible for high maternal and infantile mortality and they have deteriorated the intellectual and physical progress of the people.

13. There has been further development of public opinion in this part of the country in favour of an extension of the Age of Consent in marital as well as extra-marital cases since the amendment of the law in 1925. The masses being ignorant it is confined to educated classes of people.

14. Yes, ignorant women favour early consummation of marriage for their children.

15. Yes, the village officers in villages and municipalities in towns and cities should be very strictly warned to make all entries of births in birth and death register from which true age could be easily ascertained.

16. No.

17. Yes. The same punishment as provided for in the Indian Penal Code should be meted out to each class of offenders.

18. The procedure as laid down in the Criminal Procedure Code should be adopted for each class of offenders.

19. No.

20. The penal legislation fixing the higher age of consent for marital cases will be more effective. The majority of the people being ignorant will not like this but in the end it will be beneficial to the people.

21. It is not possible to educate the teeming millions of the Indian people in a short time and without the spread of education the social reform is not possible. Until the masses are educated I would prefer to rely on the strengthening of the penal law to secure the object in view. When all people are educated they will be in a position to know the horrible consequences of early marriages and they will themselves shun from contracting such marriages. Government then will have no need for making such laws.

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Letter, dated the 3rd April 1928, from Mr. J. P. MEHTA, the Honorary Joint Secretary, Parsi Central Association, Bombay.

With reference to your letter No. 3352/2B, Home Department, dated the 3rd March 1928 we are directed by the Council of the Parsi Central Association to inform you that the said Association is entirely in sympathy with and approve of the Bill for further amending the Sections 375 and



376 of Indian Penal Code. In its opinion it is absolutely necessary to protect children against unlawful intercourse with them during their infancy both before and after the marital relationship.

**Written Statement, dated the 17th August 1928, of Mr. V. H. NAIK, M.A., Bar.-at-Law, Collector and District Magistrate, Bijapur.**

1. The Age of Consent in marital state is 13 and in extra-marital state, 14, as the law now is.

Girls in advanced classes generally come to puberty at 13, but those in backward classes and depressed classes, who live in less easy circumstances, come to puberty at 14.

Cohabitation in extra-marital state is rare among advanced and backward classes. But there is to some extent cohabitation in extra-marital state among depressed classes.

In my part of the country there is no cohabitation before girls attain puberty.

In the above circumstances, there is no dissatisfaction among orthodox people with the present law as to the Age of Consent. On the other hand reformers desire to raise the Age of Consent still higher.

2. As girls are not physically fit for cohabitation for at least 2 years after they attain puberty, the Age of Consent is required to be raised to 15 in marital state and to 16 in extra-marital state.

3. Nothing to suggest.

4. (1) As girls do not attain puberty before 13 or 14 and as there is no cohabitation in my part of the country before the attainment of puberty, the amendment of 1925 cannot be said to have had any effect in the direction of postponement of the consummation of marriage.

(2—3) Nil, so far as I know.

5. *Vide* answer to Question 1 above.

6. (1) No.

(2) Yes.

(3) No.

In my experience no cases have come to court.

7. Mayukha lays down as follows:—

(a) A girl of 8 years is "Gouri", of 9 years "Rohini", of 10 years "Kannya" and of more than 10 years "Rajaswala".

(b) By giving a "Gouri" in marriage, one attains "Swarga" (Heaven), by giving a "Rohini" "Vaikuntha", by giving a "Kannya" "Brahma loka" and by giving "Rajaswala" "Rourava" (Hell).

(c) If the husband, not being away from his wife, does not cohabit with her, on her attainment of puberty he, along with his ancestors, commits the sin of infanticide.

The practice in my part of the country of early consummation of marriage after puberty is, in my opinion, to be attributed to these religious injunctions.

8. In my part of the country a ceremony called "Shobhana" is always performed after the attainment of puberty and before the consummation of marriage.

Even as to those girls of depressed classes, who cohabit in extra-marital state, there is a ceremony subsequent to the attainment of puberty and before the commencement of cohabitation.

It is customary in my part of the country to perform these ceremonies within 16 days after the attainment of puberty.

9. I do not consider the attainment of puberty as a sufficient indication of physical maturity to justify the consummation of marriage. At least 2 years should pass after the attainment of puberty and before the commencement of cohabitation.

10. Between 15 and 16.

11. No remarks.

12. Early consummation and early maternity are no doubt responsible for high maternal and infantile mortality and have affected the intellectual and physical progress of the people.

13. There is some public opinion in favour of an extension of the Age of Consent both in marital and extra-marital state, but it is confined only to higher educated persons.

14. Women with education and experience do not, but others, do favour early consummation of marriage for their children.

15—19. No remarks.

20. I think that fixing a higher age of consent for marital cases is likely to be more practicable and effective than fixing the minimum age of marriage by law.

21. In my opinion both the strengthening of the penal law and progress of the social reform by means of education by social propaganda are required to secure the object in view.

In my part of the country there is, as stated above, a "Shobhana" or similar public ceremony, which is invariably performed before the girl on attaining puberty begins to cohabit, either in marital or extra-marital state. I would suggest that the performance of this ceremony should be penalised before the girl attains the age of 15 in marital state and of 16 in extra-marital state. It appears to me that as "Shobhana" or similar ceremony is publicly performed, this penalisation can be enforced widely and easily and that it will have the result of effectively postponing cohabitation after the attainment of puberty.

**Written Statement, dated the 17th August 1928, of Mr. JAGANNATH ATMARAM SAMANT, B.A., LL.B., First Class Subordinate Judge, Dhulia.**

1. I am not aware of any dissatisfaction with the law of Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. If there is any dissatisfaction, it is confined to only a small section of educated persons who have given special consideration to the subject.

2. I think an advance on the present law should be made. It cannot be denied that eugenics or production of strong and healthy children and not mere gratification of the physical senses, ought to be the legitimate object of the union of the two sexes. Strong and healthy children can be expected to be produced only by mothers who are themselves strong and healthy. The mother is the root of the race. Steps must be taken to protect and preserve the health of every prospective mother. As far as possible, men must be prevented from having sexual intercourse with women before the latter are in a fit condition of health to undertake the duties of mothers. Otherwise, the race will soon deteriorate physically, and with that, also mentally.

It is therefore the duty of the State to make necessary laws to prevent such a deterioration amongst its subjects. In my opinion (and I think I shall be supported in it by expert medical opinion also), the right age for a woman to be physically fit to commence to conceive and bear children is 16 years. Before that age, a woman is not physically fit to efficiently undertake or discharge these duties without undermining her own health, and with it that of the child which she may produce. Under the present law, men can have sexual union with women before the latter are thus physically developed to undertake the duties of mothers and hence we find there is a great deterioration in the general health of the people in India and there is a growing mortality among women and children at early ages and an increase in the cases of persons suffering from consumption. The State ought not to allow this state of things to continue but it ought to undertake to provide adequate laws which will put some effective check on the increasing physical deterioration of the people. I think that the law of the Age of Consent by a woman ought to be so altered as to make that age approach as far as possible the age of 16 years at which age a woman may be regarded as being physically, and probably also mentally, fit to decide whether she should undertake the onerous duties of a mother.

3. I have had no opportunity to try criminal cases and so I am not competent to give any information in regard to this question. But as a member of the general public, I should say that such crimes are not frequent and the amendment of the law made in 1925 has had no direct effect on the crimes of this class. In order to make the law more effective in non-marital cases, I would raise the age of consent at least to 16 years, if not even to 18 years.

4. In the educated classes, the ages of marriage and consummation are slowly but definitely increasing. This is not due to the amendment of the law made in 1925, but is due to progress in education and to an awakening amongst the boys themselves of a sense of their responsibilities in this matter and to an ever increasing desire amongst them not to be fettered with chains of marriage before they have completed, or very nearly completed, their educational courses so as to make them fit to stand on their own legs and to be able to earn a livelihood for themselves. There is also a general healthy improvement in the mental attitude of educated parents in regard to this subject. They are not now ready to marry away their daughters unless they find that suitable boys are secured as husbands for them. But the credit for this change in their attitude is due not to the change in the law made in 1925, but to a growing consciousness on the part of educated parents regarding their duties and responsibilities concerning their children.

5. Thirteen is the age when girls attain puberty in a majority of the cases. A fairly good proportion of girls attain puberty in the 12th year of age and a similarly good proportion do not attain puberty until they reach the 14th year. But, for all practical purposes, thirteen may be taken to be the age at which girls attain puberty. Girls who have not ordinarily to do out-door physical work and who are in well-to-do circumstances attain puberty in the 12th year of their age. On the other hand, girls of the labouring classes who have to help their parents in doing out-door manual work and who do not receive enough nourishing food attain puberty in the 14th year of their age and sometimes in the 15th year. This is not due to birth in any particular castes but is dependent on the means and circumstances of the family of birth.

6. I am not aware of cohabitation before puberty being common in any class of people in this part of the country, but I hear that among the Marwaris, married girls are made to cohabit with their husbands immediately after the marriage, which usually takes place before puberty. Cohabitation soon after puberty is more or less the rule amongst all the classes. There may be cases in which cohabitation takes place before the girl completes thirteen years, but such cases very rarely come to Court, and

when they come to Court, the motive of the complainant is very often not honest. The girl and her near relations and friends will try their best to hush up the matter and to suppress or screen the offence.

7. I am not aware of the existence of any religious injunctions directing the consummation of marriage before puberty, and I do not think that the practice of this nature, where it exists, as amongst the Marwaris, is due to any conscientious impulsion to obey religious injunctions. The act is done in blind observation of an existing custom.

As regards consummation of marriage at puberty, there are passages in the Religious Books which are interpreted to mean that it is incumbent on the married couple to commence cohabitation after the wife attains puberty. There may be other passages in the Books, but I may mention the following:—

१—ऋतौ भार्यामुपेयात् (श्रुतिः)

२—ऋतुस्नाता तु या नारी भर्तारं नोपसर्पति ।

मा ऋता नरकं याति विधवा च पुनः पुनः ॥

३—ऋतुस्नातांतु यो भार्यां सन्निधौ नोपगच्छति ।

घोरायां भ्रूणहत्यायां युज्यते नात्र संशयः ॥

(पराशर स्मृतिः अध्याय ४ श्लोकाः १४ । १५) ।

४—ऋतुः—रजोदर्शनमारभ्य षोडशदिनान्मृतुः (तत्र चतुर्थं दिवसे स्नाता भवति) [पराशर संहितायां माधवाचार्यकृत व्याख्या, अध्याय ४ । पृष्ठ ३४] ।

५—यः स्वदारान्मृतुस्नातान्स्वस्थः सन्नोपसर्पति ।

भ्रूणहत्यामवाप्नोति प्रजां प्राप्तं विनाश्य च ॥

(देवस्तः) ।

६—वाहिताग्निरूपस्थानं न कुर्याद्यस्तुपर्वणि ।

ऋतौ न गच्छेद्योभार्यां सीऽपि कृच्छार्धमाचरेत् ॥

(बृहस्पतिः) ।

७—ऋतौ न गच्छेद्योभार्यां नियतां धर्मचारिणोम् ।

नियमातिक्रमे तस्य प्राणायामशतं स्मृतम् ॥

(वैधायनः) ।

Some may consider that these passages are not mandatory but only directory, but since the passages lay down penalties for the sin that results from the non-observance of the act, they will have to be considered as being mandatory. Then, it may be argued by some that these passages do not necessarily apply to the time of the first menstrual discharge of the married girl but to similar periods in subsequent years after she has become fully developed. But it will be seen that the sin of *Bhrunahatya* attaches every time the husband fails to discharge his duty to his wife

during the sixteen days period after the appearance of the menses excepting the first four days and some other days out of that period which are specified by the rule. Then, we have also to remember that the marriage of a girl is enjoined to be performed before she completes the 12 years of age. Thus, we have the following passages:—

१—अष्टवर्षा भवेत्तैरी नव वर्षा तु रोहिणी ।

दशवर्षा भवेत्कन्या अतउर्ध्वं रजस्वला ॥

२—माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।

त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥

३—तस्मादुद्वाहयेत्कन्यां यावन्नर्तुमती भवेत् ।

विवाहोऽष्टम वर्षायाः कन्यायास्तु प्रशस्यते ॥

४—प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।

मासि मासि रजस्तस्याः पिवन्ति पितरः स्वयम् ॥

(पराशरः) ।

If, according to these passages, a girl is to be married before she completes her 12th year and if, as is the usual case she attains puberty in that year or in the next year, consummation has to be regarded as excepted to be performed and enjoined as soon as puberty is attained. We have also to bear in mind that the Garbhadhan Sanskar (गर्भाधान संस्कार) is a Naimittic Sanskar (नैमित्तिक संस्कार) i.e., a ceremony which has to be performed when the *Nimitta* (निमित्त) or occasion occurs. It is a Sanskar (or ceremony) which is called Ananya-gatika Naimittika (अनन्यगतिक नैमित्तिक) । What this means is explained in the following passages:—

काठकण्टह्येऽपि—मले नान्यगति कुर्यान्नित्यां नैमित्तिकीं क्रियाम् ।

(न विद्यते अन्या गतिर्यस्याः सा, तथाच अयमर्थः—

यस्या अन्यमासे आचरणात् कालातिपत्तिजनित-

प्रत्यवायापत्तिःसाम् अनन्यगतिकनैमित्तिकी क्रिया,

सा मलमासे अपि कुर्यात्) [निर्णयसिन्धु

पृष्ठ ८] ।

A Mala Masa (मलमास) is otherwise known as an Adhika Masa (or an intercalary month). The ceremony of Garbhadhan is enjoined to be performed even in an intercalary month, which shows that the non-performance of the ceremony even in an intercalary month, which is a month in which the performance of many things is to be avoided, would produce sin which would have to be expiated. However, I do not think that it is owing to a conscious impulsion to observe the above religious injunctions that the ceremony of Garbhadhana is now-a-days, performed by the people. I think it is performed because of a desire to blindly follow a custom that has been in existence amongst them. If they are properly educated

on the subject and made to realize the evil consequences that result from early cohabitation, I have no doubt that a fairly large proportion out of them will change their entire attitude towards the question and we shall find that the religious injunctions are left severely alone. It is rather the ignorance regarding the consequences of their act which is the cause of their continuing to blindly follow the custom which they find established amongst them.

8. The "Garbhadhana" ceremony is usually performed amongst people who still adhere to existing custom and the old school of thought, and the majority is of such people. This ceremony coincides with the consummation of the marriage and is not anterior to it. It is usually performed immediately after, or a short time after, the attainment of puberty by the wife. I hear that the "Gaona" ceremony is performed amongst the Marwaris immediately after the marriage, even though the wife has not attained puberty and the husband and the wife cohabit from the date of the marriage after the performance of the "Gaona" ceremony.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I consider that before the girl completes her 15th year, there ought to be no consummation of her marriage. Her physical development is completed in her 16th year and she becomes physically fit to conceive and bear children in that year. In my opinion, the consummation of the marriage of a girl should ordinarily be done in her 16th year of age and not before. If consummation is done in 16th year of the married girl, there would, in my opinion, ordinarily be no injury to her own health or to that of her progeny. On this subject, the opinion of श्रीसुश्रुताचार्य may be quoted with advantage:—

१—पंचविंशेततोवर्षे पुमान्नारी तु षोडशे ।

समत्वागतवीर्यौ तौ जानीयात् कुशलोभिषक् ॥

२—ऊन षोडशवर्षायां अप्राप्तः पंचविंशतिम् ।

यद्याधत्ते पुमान्गर्भं कुक्षिस्थः स निपद्यते ॥

३—जाती वा न चिरंजोवो ज वेदा दुर्वलेन्द्रियः ।

तस्मादत्यंत बालायां गर्भाधानं न कारयेत् ॥

It must not be forgotten that the Ayurveda (आयुर्वेद) is a subsidiary part (उपाङ्ग) of the Vedas (वेद) । As such, it cannot be entirely ignored.

10. An Indian girl of average physical development would be competent to give an intelligent consent to cohabitation with due realisation of consequences after she has completed 18 years of her age. Before that age, she may know the consequences but would not be able to fully realise them and will not have sufficient strength of mind to resist the temptation of the moment.

11. I am not able to mention the details of the ages and injuries sustained by girls in such cases. But it is a matter of every-day experience that cohabitation before full physical development of a girl, though after puberty, results in producing lameness and in undermining her health and brings on her early death and prejudicially affects the health of her progeny.

12. I am emphatically of this view.

13. As regards marital cases, I do not think there is any further development of opinion in favour of the extension of the age of consent. But as regards extra-marital cases, there appears to be a development of

opinion among the educated classes of this part of the country in favour of an extension of the age of consent to 16 years.

14. I do not think so. But they have to follow the long established custom and so they blindly follow it, though they would often wish that the consummation is postponed to a suitable future age after full development of the body of the girl.

15. Though I have not had any occasion to try such cases, I would say that there must be difficulties experienced in determining whether the age of a girl is 13 or 14, whether it is 14 or 15. These ages are such, that mistakes may often be committed by even expert doctors. So far as extra-marital cases are concerned, the difficulties can be made to disappear if the age of consent in those cases is fixed at 16 years. I do not think it would be difficult to determine whether a girl has or has not completed 16 years of age. The very physical development of her person will give quite clear proof of her said age. I am unable to suggest any measures whereby it would be possible to remove or minimise the difficulties of determining whether the age of a girl is 13 or 14 or whether it is 14 or 15.

16. Unless the age of consent is raised to 16 years, I do not think that the difficulty of determining the age will be materially reduced. The 16th year is the year of a girl's full development. She then attains her full bloom, which can be easily marked. If the competition is between the two consecutive years like 13 and 14 or 14 and 15, there will always be a difficulty to determine the age unless a birth certificate is available.

17. I would separate them into different offences. I would leave the present law regarding the amount of punishment untouched, in extra-marital cases as well as in marital cases of rape as now defined by the Indian Penal Code. As regards offences of sexual intercourse by a man with his own wife above the age of 13 but under the age of 14, punishment, in my opinion, should be simple imprisonment for 2 years or fine or both.

18. If the punishment to be prescribed is simple imprisonment as suggested above, the trials of offences within the marital state, when the girls are above the age of 13 years and below the age of 14 years, may be held by First Class Magistrate. But if the punishment is to be of either description, they should be held by a Sessions Court, where the accused can have the advantage of a trial by a Jury or assessors.

19. I cannot suggest any safeguards beyond those existing at present. Such instances are bound to occur whatever safeguards may be prescribed. The present safeguards ought to be retained.

20. I think that legislation fixing the minimum age of marriage at 13 (or at least at 12) would be more effective than any legislation regarding a higher age of consent. In my opinion, legislation fixing the minimum age of marriage at 12 or even at 13 years would not be so resented as fixing the age of consent at 14 years or more in marital cases.

21. Side by side with strengthening the penal law, I think we ought to try to make progress in social reform of this kind by means of education and social propaganda that would directly draw the attention of the people to taking interest in eugenics and to the importance of this branch of their social life.

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Written Statement, dated the 21st August 1928, of Mr. P. L. THACKER, B.A., LL.B., Advocate, Presidency Magistrate, Sixth Court, Bombay.

1. Yes.

2. The circumstance which justifies making an advance on the present law is that the age of 14 years is too low and inadequate to protect young girls.

3. Crimes of rape cannot be said to be frequent in Bombay. It is difficult to say even approximately within so short a period what is the practical effect of the amendment of the Law made in 1925.

4. Vide answer to No. 3.

5. 14-15 years.

6. It is not common.

7. The practice of the early consummation of marriage is not so much due to religious injunction as to the social customs.

8. No. The least age limit should be 18 years in India.

10. 16 years.

11. Several. Cohabitation between 14 and 16 years of age resulted in death of first two or three children and in some cases mother died on 3rd or 4th delivery.

12. Certainly.

13. Yes. General.

14. No.

15. Yes. Compulsory registration of births.

16. I don't think.

17. Yes. I would maintain the present scale of punishments.

18. Yes. I would maintain the present procedure.

19. No.

20. No. Legislation fixing the minimum age of marriage.

21. I would rely on the strengthening of the Penal Law.

**Written Statement, dated the 20th August 1928, of Mr. RAMDATT W. DESAI, B.A., LL.B., Honorary Secretary, Pleaders' Association of Western India, Bombay.**

1. The Council of this Association has no means to ascertain whether there is any dissatisfaction with the State of the Law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code for the following reasons :—

(a) Very few cases have come before the Courts of offences, especially relating to marital offenders under the sections since the last amendment.

(b) Owing to several circumstances the age of marriage of girls in the educated and advanced classes on this side of India is gradually rising without any effort on the part of any body. The opening up of girls schools, where the higher standards are taught and the keen desire of the girls as well as of parents to educate their girls is contributing much in this direction.

2. Section 375.—The Council of this Association would not be against any proposal which would raise the age from 14 to 16 or even 18 in the general definition of the offence of rape as defined in Section 375.

It appears from the extracts annexed to your Questionnaire that the proposal of Sir H. S. Gour, is to raise the age from 14 to 16. This Council has no objection to that proposal provided that that is not to be taken as any guide for making any corresponding increase in the age of the wife as against any intercourse by her own husband.

The Council of this Association are of opinion that the more logical proposal would be to increase the age limit in the case of offences under Section 375 to 18 years which is the age of majority under the Indian Majority Act. If a minor is not competent to give his or her consent to any contract of



sale or purchase of any commodity or enter into any lawful agreement or contract because he or she is under 18 years of age, it is not reasonable to hold that a girl under the age of 18 years is competent to give her consent to an act of sexual intercourse with any stranger.

(2) But this Council is not prepared for any increase in the age of a wife over that already laid down by the exception to the existing Section 375, which is 13 years.

The reasons for this opinion are that the age already fixed has been a sufficient advance over the infantile ages at which marriages were theretofore performed and the ages for consummation that way have been possible previously. The Council is not aware of any cases where girl wives over 13 and under 14 years of age have suffered any injury or have undergone any evil results of such an intercourse. It must be left to the sure and steady influence of education and general improvement in the culture of the people to advance the age at which a girl should be allowed to mate with her husband. In fact this Council does not put any faith in legislation of this kind to effect any real improvement in the physical improvement of the Indian Communities.

The causes of the deterioration and physical breakdown of the Indian people must be sought for in the general poverty of the country and the drain caused upon the already meagre means of sustenance of any average family by the very prevalent vice of drunkenness for which every facility is provided by the State. Unless this drain is stopped and better means are provided for the bringing up of infants and their mothers during their confinements, the evil effects from which India is at present suffering will not be obviated by any increase in the Age of Consent for an Indian wife.

3. This Council is not aware that crimes of seduction or rape are frequent on this side of India. They have also had no opportunity of noting what the effect of the amendment of the law made in 1925, raising the Age of Consent outside the marital state has been on the state of the crime of rape or the other kindred offence mentioned in your 3rd question. It has been already stated that even without making any such enquiry this Council is prepared to raise the age from 14 to 18 in the cases of rape or seduction outside the marital state.

4. It may be stated at the outset that this Council has no information whatsoever of the state of crime referred to in your question No. 4 nor of the consequences of the late amendment as set out in sub-paras. (1), (2) and (3) of your question No. 4.

The Council understand that during the 2½ years that have elapsed since the late amendment of 1925, only one case within the marital state has come to the Courts.

In any event this Council is not in favour of any present disturbance of the law governing husbands and wives beyond what has already been introduced in 1925. The steps which this Council would recommend for any supposed cases between the ages of 13 and 14 years is to educate public opinion; carry out propaganda work so as to convince the people among which such cases are supposed to exist that their action of allowing cohabitation between a husband and his wife where she is not over 14 though over 13 is not conducive to the health of the wife or of the children that would be born of such union.

5. This Council believes that the average age at which girls attain puberty on this side of India is generally over 13 and under 16. A good deal depends upon the stamina of the girl, her surrounding circumstances and her environments. No general answer can be given because the age varies even in girls of the same family.

6. *Cohabitation*.—(The question is assumed to be for the marital state.)

(1) Before puberty—is very rare almost unknown in the advanced classes of Hindu Society.

(2) Soon after puberty—as long as the age of marriage among the educated and advanced classes was low say before the girl attained puberty, the general practice was for the marriage to be consummated almost on the first signs of attainment of puberty. This was the occasion for the performance of the Garbhadhan ceremony referred to in your question No. 8. And in no case of a marriage of a girl who had been married before she attained puberty was there any consummation of marriage without the performance of this ceremony as a condition precedent.

Since however the age of marriage for the majority of the communities on this side of India has now gone beyond the usual time at which puberty is first attained, and the girls are hardly married under the age of 13 or 14, the consummation takes place soon after the marriage, but not if the wife has not previously attained puberty. In that case the performance of the Garbhadhan ceremony cannot be performed till the puberty is attained and it is only then that consummation takes place.

(3) Before the girl completes 13 years—speaking of the communities with whose social conditions this Council has any acquaintance, consummation before the girl completes her 13 years is almost unknown. As a matter of fact almost every girl of that age of the present day is a student in a school. Her marriage may or may not have taken place and as puberty is rarely attained before 13 years, consummation must consequently be unknown.

But the Council must confess that the scope of their information is very limited and the facts stated in the above answer must be subject to that limitation.

7. It would be better to answer your question No. 7 by quoting some well known texts of Hindu Law:—

*Goutama*.—Sacred Books of the East, Vol. II. p. 269, Chapter 18, Verses 20 to 23, says that a—

‘Girl should be given away in marriage before the appearance of *menes* and that the father would incur blame if he did not give her away before that age.

*Baudhayana*.—Prasna IV, Adhyaya 1, Sacred Books of the East, Vol. 14., Page 314, says—

Verse 11. \* \* Let him (father) not keep (the maiden) in (his house) after she has reached the age of puberty.

Verse 12. He who does not give away a marriageable daughter during three years doubtlessly contracts a guilt equal to (that of) destroying an embryo.

Verse 13. Such will be the case if anybody asks her in marriage, and also if nobody demands her, Manu has declared that at each appearance of the menses the father incurred the guilt of a mortal sin.

Verse 14. Three years let a marriageable damsel wait for the order of her father. But after that time let her choose for herself in the fourth year a husband (of) equal (rank). If no man (of) equal (rank) be found she may take even one destitute of good qualities.

*Narada-Smriti*.—Sacred Books of the East, Vol. 33, Page 170—

Chapter XII, Verse 25. Let no maiden suffer the period of maturity to come on without giving notice of it to her relations. Should they omit to give her in marriage, they would be equal to the murderers of an embryo.

Verse 26. He who does not give such a maiden in marriage commits the crime of killing an embryo as many times as her period of menstruation passes by without her having a husband.

Verse 27. Therefore a father must give his daughter in marriage once for all as soon as the signs of maturity become apparent. (By acting) otherwise he would commit a heavy crime. Such is the rule settled among the Virtuous.

*Brihaspati-Smriti*.—Sacred Books of the East, Vol. 33, Page 367—

Chapter XXIV, Verse 3. A father who does not give his daughter in marriage in proper time (before she has reached maturity), a husband who has not connexion with his wife at the time favourable for procreation, and a son who does not support his mother—all such deserve contempt and shall be punished as ordained in Law.

The above texts are quoted in strict compliance with the second part of the 7th question. But the Council of this Association do not thereby mean that the practice of the early consummation of marriage before—if it exists to any large extent anywhere—or at puberty is necessarily due to religious injunctions. Social manners and customs may to a large extent be responsible for this practice. Mere religious injunctions may have no doubt contributed to the origin of the practice, but in actual life even the existence of the religious texts may not be known to the people.

The political vicissitudes through which the country undoubtedly passed during the last few centuries are responsible to a large extent for several social customs and manners which are visible in Indian Society at this day and the necessity of providing a protector for the female members of the family may have something to do with the practice.

8. Garbhadan ceremony is usually performed in the advanced communities on this side of India. If the girl has already attained puberty before the marriage, this ceremony takes place shortly after the marriage and is the permission for consummation of the marriage. If the girl has not attained puberty before the marriage, then the ceremony usually takes place on the 5th day after the first attainment of puberty, unless there is some impediment.

The Garbhadan ceremony is never performed anterior to the marriage, but in some cases it may be anterior to the actual consummation of the marriage. Instances of this latter kind occur when the husband himself is unwilling to have consummation owing to his being engaged in studying for University examinations, and the ceremony has to be performed to satisfy the religious requirements. But such cases are rare.

9. The question does not admit of any general reply in all cases. The attainment of puberty has been usually taken on this side of India as a sufficient indication of physical maturity to justify consummation of marriage and unless either the wife or the husband are physically or constitutionally weak, no evil results are known to arise from such consummation.

It is no doubt true that where either of the couple is weak or has a bad constitution, there are weak children born, the party who is weak suffers from the effects of the consummation. But it will not be correct to draw from these exceptional cases, a general conclusion against the wisdom of the practice obtaining on this side of India of consummation of the marriage on the first attainment of puberty. The above remark would have to be qualified by a further observation, *viz.*, that as a matter of fact on this side of India the marriage age is gradually going up and girls are not married before they attain puberty. Naturally therefore the consummation when it takes place after the marriage is much later than the attainment of puberty.

The latter part of question No. 9 is more for expert medical opinion than for the Council of this association to answer and even then the expert cannot lay down a general rule for all cases. A good deal depends upon the circumstances of each case.

10. This question has been asked without sufficient regard to the educational and economical condition of the Indian girl. Even educated males and graduates of the University are hardly able to give an intelligible thought

to the responsibilities of a married life. Under the present conditions of Indian Society it is difficult to say that an average Indian girl does not know what the consequences of cohabitation are, even though she may be of the tender age of 12 or 13. If the consent of the girl is to be intelligent with a due realization of the consequences she must be presumed to be properly educated. She must have some rudimentary knowledge of the physical laws as regards human body and she must also have some experience of the world in the sense that she must know the disastrous consequences resulting both to the mother and to the child of a premature motherhood.

Where such knowledge and experience exist and the girl has sufficient intelligence to infer the results she can be in a position to judge for herself even at the age of 15 or 16 if not before. But in the absence of such knowledge and experience she cannot be a competent judge even at a much later age.

11. This Council is not in a position to answer this question in the absence of any statistics.

12. To a certain extent this question also is beyond the capacity of this Council for want of data.

But this Council will generally say that if even one-half of the enthusiasm and energy which have been bestowed by the Leaders of Social Reform in Hindu Society on the subject of child marriage and early consummation is bestowed on the economical aspect of life and the eradication of the evil of drink, much of the maternal and infantile mortality referred to in your question No. 12 will be saved.

Want of proper nourishment both for the mother and the infant, and the misery brought on the family by the habits of drunkenness in which the bread-winner of the family indulges are to a great extent responsible for the evils. This Council believes that in communities and families where proper care is taken of the mother and the infant both before and after childbirth cases of such mortality are very rare.

To attribute the high mortality solely or mainly to early consummation and early maternity is to divert attention from the really grave causes which give rise to such mortality.

13. The Council have no information of any such genuine development of public opinion, with the exception of the notices and bills brought from time to time in the Legislative Assembly, and the Public Meetings held in consequence of the circulation of such bills.

14. No. On the contrary there has always been a tendency on the part of the ladies on this side of India to prevent a premature consummation of marriage.

15. This Council has no information.

16. The difficulties of determining the age of a girl are not small and expert medical opinion can never agree supposing a case is contested in Court. This is not the place to enter into a discussion of the subject, but if really any satisfactory proof of age is required, it can be obtained much better at 16 than at 14. Between 13 and 14 there is scope for so little development that it may be treated practically as negligible. The growth of teeth is one of the prominent tests of age and that can never be conclusive before 16.

This Council is *not* prepared to answer question 16 in the affirmative

17. The Council take it that the object of the legislation so far as marital relations are concerned is to educate Public opinion rather than to penalise those who belong to the Orthodox School. This object would be secured by securing a conviction in cases of a breach of the new law and once the law has become familiar and popular, it will be a stepping stone for further advance.

But the Council are of opinion that the distinction which has been recognized in Section 376, as amended, is quite sufficient and that a new Section like 376A, is not required at all.

It may be mentioned that the Section 376 of the Indian Penal Code, and the corresponding extract from the Schedule II of the Code of Criminal Procedure do not seem to be correctly quoted in the extracts annexed to your letter under reply. It is difficult to understand the sections as quoted there. Take for instance Section 376, from the Indian Penal Code as quoted in your extract. The portion within brackets is as follows:—

(Unless the woman raped is his own wife, and is not under 12 years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.)

Supposing that a man had sexual intercourse with his wife against her will and she is not under 12 years of age. Is he liable for rape? The para. quoted within brackets by you makes him liable though the wife may be 40 years old.

The same impression is created by the extract of Section 376, as quoted by you for Schedule II of the Criminal Procedure Code.

18. As this Council is not in favour of a new Section like 376A, there does not arise any necessity to answer this question.

19. No. This Council has no means to ascertain if the safeguards whatever may exist have proved insufficient or otherwise.

20. It has already been stated above that the interference in marital cases has gone to the maximum limit and it is not desirable to make any advance beyond the age of 13 for the present.

As an abstract question nobody can deny that a penal law can readily enforce obedience which a civil interdict may not be able to command. Even in the case of the Civil Legislation, the latest trend of Public opinion seems to lean on the side of penalising the parents and those who participate in the marriage below the age of prohibition, thus rendering the Civil Law really criminal.

This Council is opposed to the extension of the age limit.

21. The Council of this Association has always been of opinion that education and social propaganda are the real and proper means of achieving the object in view. Legislation, Penal or Civil, can be resorted to only if *bona fide* efforts have failed to achieve the object. Compare the history of the advanced communities on this side of India who have solved the question of early marriage years ago without any ostentation and without any pressure from any body.

**Written Statement, dated the 25th August 1928, of Mr. SORAB B. DADYBURJOR, Honorary Secretary, Bombay Vakils' Association, Bombay.**

1. As far the city of Bombay is concerned there is a strong feeling against the Age of Consent, as it exist at present. It should be raised.

2. There is no reason to allow the law of Age of Consent to remain as it is. It is desirable to make an advance and I would raise Age of the Consent, within marital limits to 14, and to 16 in all other cases.

3. Crimes of seduction or rape are not frequent in this part of the country. The period is too short to give any opinion about the amendment made in 1925.

4. The raising of the age has tended to postpone the consummation of marriage earlier and has given encouragement to those who have been working in this direction.

5. The usual age is 13 to 15 but generally it is 14. It differs in different communities, by a year or so. Amongst the poorer class it is often from 15 to 16 years.

6. (1) Very rare.

(2) Generally, if the girl is married.

(3) No. Cases very rarely come to Court.

7. There is no religious injunction for consummation of marriage before puberty, but ordinary people do believe that there is a religious injunction for consummation of marriage little after puberty. People care more for customs and usage.

8. This ceremony is not performed amongst Gujratis but it is common amongst Deccanese. It is just anterior to consummation and soon after the attainment of puberty.

9. The attainment of puberty is no indication to justify consummation of marriage. It is desirable that the age should be raised steadily. At present 16 years should be the earliest age.

10. She is generally never able to give an intelligent consent to cohabitation. She might be able to do so after she is 18 years.

11. None.

12. Yes; On physical grounds early consummation is definitely harmful and in the long run, retards the physical and intellectual progress of the people.

13. Owing to spread of education, there has been a desire to move further in the matter. At present it is more or less confined to illiterate classes.

14. No.

15. Yes; it can only be remedied by strict registration of births.

16. Yes.

17. It is desirable to separate them. The maximum punishment should be one year in case of marital offences, and seven years in a case of extra-marital offences.

18. It is desirable that encouragement should be given to bring these offences to light. A trial in camera, in case of marital offences, would be desirable in trials of those offences as people are generally reluctant to give evidence in such matters.

19. I would suggest that cognizance should not be taken in marital cases, except on a complaint of the girl wife herself or her parents or such other person as would be her guardian, if she were unmarried.

20. The fixing the minimum age of marriage is the better of the two alternatives.

21. Social reform is alright, but it cannot go further without legal sanction. In consequence, legal enactments are necessary, as without them no progress can be made. At the same time, it is desirable not to move too fast as that would alienate public sympathy.

**Written Statement, dated the 26th August 1928, of Mr. B. R.**

**RANSING, B.A., LL.B., Pleader, Dhulia.**

1. There is no general dissatisfaction with the state of the Law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. Those who have given special attention to the subject, may have dissatisfaction with the state of law. I am not aware of any instance of dissatisfaction.

2. In my opinion, an advance on the present Law should be made and my reasons for this advance are these:

The present state of things prevailing in the country is unsatisfactory. The huge infant mortality of our country is due to the high mortality of

young mothers. Degeneration of mothers in our country is the main cause of infant mortality. The aim of the law should be that fit women should be married to fit men. The marriage customs in different castes and creeds in our country tend to early marriages. The child-marriage tends to early motherhood and the girls are burdened with ignorant motherhood with the result that these both the mothers and children suffer. So it is the duty of the state to enact necessary laws to prevent a deterioration of race amongst its subjects. Female children should be protected from premature cohabitation and from immature prostitution.

The proper age of a woman to take up the responsibility of motherhood is 16. Before that age, a woman is not physically or in any other way fit to discharge the duties of motherhood. So the law of the Age of Consent by a woman ought to be advanced to make that age approved as far as possible 16. At that age, as I remarked above, a woman is fit to become a mother.

3. The crimes of seduction and rape are not so frequent in our district. The amendment of the law made in 1925, has had no direct effects on the crimes of this class. By raising the Age of Consent to 16, I think the crimes of rape and seduction will decrease to a great extent.

4. The amendment of 1925, raising the Age of Consent within the marital state of 13 years, has not been effective in protecting married girls against cohabitation with husbands within the prescribed limit. The general tendency amongst educated and advanced classes is to raise the ages of marriages of both the girls and boys. Owing to progress of education and surrounding circumstances, people are not willing to marry their own daughters at an early age and also educated boys are not willing to get themselves married before they have completed their courses of study. Generally amongst educated classes in this part of the country, marriages of girls are put off beyond 13 years.

5. The usual age at which girls attain puberty is 13 years. A fairly good proportion of girls attain puberty at the age of 12th year and some girls attain puberty at the age of 14 years of age. The different ages of attaining puberty are due to various circumstances and surroundings. As for example girls of well-to-do families attain puberty earlier than those who maintain themselves by physical labour. The different ages do not differ owing to different castes and communities but are dependent on the means and circumstances of the family or both.

6. Generally cohabitation is not common in our part of the country before puberty. It is learnt that amongst the Marwari community, married girls are sent to their husbands for cohabitation immediately after the marriage ceremony which usually takes place before puberty. Cohabitation generally takes place soon after puberty. There are rare cases of cohabitation before the girl attains 13 years. During the last 30 years I learn that only three cases of such nature had come to the Sessions Court of Khandesh. But even looking to such cases, the motive of the complainant is not honest. I do not say that such cohabitations do not occur and cases rarely come to the Court and the relations of the girls and friends generally try to hush up the matter and try their best to screen the offenders.

7. As far as I am aware there is no religious injunction for the early consummation of marriage before puberty; as regards consummation at puberty, there are texts in the Religious Books to the effect that married couples should commence cohabitation as soon as the wife attains puberty. The following are some of Religious Texts with regard to this subject :

(१) ऋतौ भार्यामुपेयात् (ऋति) ।

(२) ऋतुस्नाता तु या नारी भर्तारं नोपसर्पति ।

सा मृता नरकं याति विधवा च पुनः पुनः ॥ १ ॥

(३) ऋतुस्नातातु यो भार्यासन्निधौ नोपगच्छति ।

घोरायां मूणहत्यायां युज्यते नात्रसंशयः ॥ १ ॥

(पराशर स्मृतिः अध्याय ४ श्लोक १४-१५) ।

(४) ऋतुः—रजोदर्शनमारभ्य षोडशदिनान्यतः । तत्र चतुर्थदिवसे स्नाता (भवति) ।

(५) यः स्वदानृतुस्नातान्स्वस्थः सन्नोपसपेति ।

मूणहत्या मवाप्नोति प्रजां प्राप्तां विनश्य च ॥

(दिवल) ।

(६) चाहिताग्नि रूपस्थानं न कुर्यात् यस्तु पर्वणे ।

ऋतौ न गच्छेद्यो भार्या सोऽपि कृच्छार्थमाचरेत् ॥

(वृहस्पति) ।

(७) ऋतौ न गच्छेद्यो भार्या नियतो धर्मचारिणी ।

नियमातिक्रमे तस्य प्राणायामशतं स्मृतं ॥

(वैधायन) ।

I think the practice of consummation of marriage is not due to religious injunctions only but due to long established customs which are apparently based upon religious injunctions. The tendency of attaching little importance to religious injunctions is growing owing to changed circumstances and changed outlook of the society. If the evil consequences of early marriages and early consummation of marriages are properly realised by the public, I think even the orthodox people will not attach undue importance to religious injunctions. Ignorance of the consequences of such marriages and the following of long-established customs in the society are some of the causes of the practice of the early consummation of marriages.

8. The Garbhadhan ceremony is a ceremony which has to be performed when occasion occurs. It is a **नैमित्तिक संस्कार** which has to be performed even in **अधिक मास** (Intercalary month) in which month the performance of many things is generally avoided. So this Garbhadhan ceremony is usually performed in our part of the country as a religious ceremony. The ceremony is performed with the consummation of marriage and not anterior to it. It is usually performed after a short time after the attainment of puberty by the wife.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. In my opinion the consummation of marriage should take place at the end of 16th year of the girl. Her physical development is complete and she is then fit to take up the responsibility of motherhood. The age of marriage of the girl should be raised to 16 years and I am of opinion that legislation to this effect should be made. If marriage is consummated in the 16th year there would be ordinarily no injury to her health and to that of her progeny. The following are two extracts from two most acknowledged medical treatises of the ancient Aryans. (If a child is conceived when the man is within 25 (twenty-five), and the woman below sixteen, it withers away in the very womb: in case it is born



it is short-lived: in case it lives long it is weak and cripple in body and limb. Fertilization should, therefore, never be made in the case of a woman who is a mere girl.)

(Sushruta, Chap. 10.)

"When a woman of full sixteen, enjoying perfect health, unites with a full-grown man of twenty, she gives birth to an illustrious son. If, however, the man and the woman are below these ages, conception will not occur at all and even if it occurs, the child will be diseased, short-lived and ill-fated."

These extracts clearly show that the ancient Aryans medicine regarded the ages of 16 in woman and 25 in man as most commendable for the beginning conjugal life.

10. In my opinion a girl of eighteen years of age would be competent to give an intelligent consent to cohabitation with a due realization of consequences.

11. I am not in a position to give details of all and injury suffered in cases of cohabitation before puberty. But it is a common experience that cohabitation before puberty and before full physical development of a girl, though after puberty ruins the health of the girl and brings her to early death and affects the health of her progeny prejudicially.

12. I am strongly of opinion that early consummation and early maternity is responsible for high maternal and infantile mortality. From the Census Report of 1921, it will be seen that one-fifth of the total mortality is from infants and one-fifth of these infants die before completing their first year. The physical strength of our nation is diminishing with every generation. The movement of Eugenics is the best form of Social Reform and steps should be taken to stop early consummation and early maternity.

13. As regards the extension of the Age of Consent in marital cases, I am of opinion that there is no further development of opinion in favour of the extension of the Age of Consent. But as regards extra-marital cases, the public opinion is that it should be extended to the age of sixteen years. The opinion is confined only to educated classes.

14. The women amongst educated classes do not generally favour early consummation of marriages for their children.

15. Difficulties have been experienced whether the age of the girl is 13 or 14 or whether it is 14 or 15. These ages are such that even the experts may commit mistakes. The difficulties will disappear if the Age of Consent in extra-marital cases be raised to 16 years. Owing to physical development of a girl it would not be difficult to determine whether the girl is 16 or not.

16. As stated above, if the Age of Consent is raised to 16, there would be no difficulty. Otherwise there would be difficulty in determining the ages of 13, 14 or 15.

17. I would separate extra-marital and marital offences. I would leave the present law regarding the punishment in extra-marital cases and marital cases of rape untouched. But as regards offences of sexual intercourse by a man with his wife above the age of 13 and below the age of 15 the maximum punishment should be simple imprisonment for two years or fine or both.

18. I would not make any difference in the procedure of trials for offences with or without the marital state. The present procedure is all right.

19. I cannot suggest any safeguard beyond those existing at present against collusion to protect the offender or against improper prosecutions or extortion.

20. In my opinion penal legislation fixing the minimum age of marriage at 13 would be more effective than any legislation regarding the higher Age of Consent.

21. Along with the strengthening of the penal law propaganda work in Social Reform should be made by means of education and other means. Public attention should be drawn to the question of eugenics and they should

be induced to take interest in eugenics and to the importance of this branch of their social life.

**Written Statement, dated the 27th August 1928, of Rao Saheb ANANDRAO SHRIPATRAO DESHMUKH, President, District Local Board, East Khandesh.**

1. No.

2. (1) The limit of the Age of Consent as already exist, viz., 14 (fourteen) years be retained unchanged; but if the girl does not attain puberty till that age and if sexual intercourse is committed against that girl before she attains puberty, that offence should be considered as a rape. According to the principles of Hindu Law a girl becomes fit for cohabitation when she attains puberty as it is an indication of her full physical development. Moreover, the custom of enforcing cohabitation according to the principles of Hindu Law, after a girl attains puberty is prevalent in this part of the country; because after puberty there is a full physical development of the girl. This fact has been established by the principles of medical and Hindu Laws. The reason of a girl's not attaining puberty before fourteen can be ascribable to her weak and delicate health and the progeny that will be generated from such girls in such state will be too weak. The limit of the Age of Consent should therefore be retained as fourteen or when she attains puberty.

(2) There is no necessity of making an advance on the present law.

3. The crimes of rape or seduction are not frequent in this part of the country. They range at the most from 8 to 12 per year. The amendment of the law made in 1925, has neither resulted in the prevention or material reduction of such cases. As the punishment already prescribed in the present law is a deterrent one no change therein is suggested.

4. The amendment of 1925, raising the Age of Consent within the marital state to 13 years, has not proved effective in protecting married girls against cohabitation with husbands. The only remedy that can be suggested in such matters is to postpone the marriages of girls and boys beyond 13 and 18 years respectively.

5. Ordinarily girls in this part of the country attain puberty between 13 and 14 years of age. This state does not differ in different castes, communities or classes of society. The attainment of puberty much depends upon the health and strength of the girl.

6. Cohabitation is not common in this part of the country among any classes before the girls attain puberty, but is prevalent, according to the customs and usages of the people soon after the girls attain puberty. No such cases of cohabitation come to the Court.

7. The religious mandates are that consummation of marriage is not advisable before the girl attains puberty and the penalty prescribed for the breach of such mandates is strictly enforced.

8. Garbhadan is usually performed in this part of the country within the time of 16 days from the day of attaining puberty.

9. Attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. There is no necessity to postpone the limit of age beyond that period.

10. A girl in India would be competent to give an intelligent consent to cohabitation with a due realization of consequences after she completes 14 years of age.

11. Many such cases would be found and I am unable to give details of age and injury sustained.

12. I consider early consummation and early maturity is solely responsible for high maternal and infantile mortality.

13. Yes. There has been some further development of public opinion in this part of the country, in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of law in 1925; but this development is confined only to cultured classes.

14. No.

15. It is better and advisable to take the opinion of experienced doctors in such matters.

16. Yes. Such difficulties will then be met in less degrees.

17. These two offences are quite distinct and separate. The punishment prescribed for these two offences is quite sufficient.

18. Yes. The procedure laid down for the trial of summons cases, *i.e.*, first examining the accused person in full details, should be insisted upon and then the girl be examined at her home. Her attendance into the Court should not be enforced.

19. There is no necessity to provide any safeguards beyond those existing at present.

20. The increase in the limit of the age of marriage and that of the Age of Consent to the enforcement of such a legislation would be effective and in consonance with the public opinion.

21. To secure the object in view, I rely on the progress of social reform by means of education and social propaganda.

The severity of sentence already prescribed in the existing law is quite sufficient.

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**Written Statement, dated the 28th August 1928, of Mrs. SALIM ALI, Secretary, Bombay Presidency Women's Council, Bombay.**

1. Yes. There is a great dissatisfaction and strong feeling, especially among the educated classes. Taking into consideration the progress of education and advancement of public opinion, a substantial increase in the present Age of Consent is desirable.

2. The increase from 12 to 13 years is very insignificant.

The various reasons which justify a substantial increase in the Age of Consent are a great change in social and economic conditions, spread of higher education among women, and employment of women and girls in factories and other occupations.

3. Crimes of seduction or rape are frequent as seen from reports which appear in the papers.

We do not believe that the amendment of the law made in 1925, has been sufficiently effective, therefore we recommend the following:—(a) To raise the Age of Consent outside the marital state to 18, (b) Propaganda work for making the laws known, rigorous enforcement of prescribed punishment.

4. Not generally.

Raising the marriage age to at least 16 and propaganda work.

5. From 11 to 14. We do not believe it differs in different castes, communities, of classes of society, but depends in a great measure on the social life and environments of the girls.

6. (1) Not quite common among certain classes.

(2) Common in many communities.

(3) There are cases before 13 years. Few cases come to Court because people concerned are anxious to avoid publicity, also because of fear of spoiling the girls' future.

7. We understand that those who practise it put forward the plea of religious sanction or injunction.

8. We understand that this ceremony is prevalent among certain sections of the Hindu community.

9. We are of opinion that a girl is not physically mature on the attainment of puberty. Besides we are of opinion that mental as well as physical development in a girl is essential to justify consummation of marriage, and so we recommend the raising of the Age of Consent to at least 16 years in the marital state.

10. It is rather difficult to give a definite reply, because much depends upon the girls surroundings, etc. But we consider that a girl should be at least 18 years of age before she can give an intelligent consent to cohabitation, since a girl is considered a minor for all other purposes till she is 18 years of age, *e.g.*, the disposal of property, etc., we do not see why she should be considered fit to justify consummation of marriage before that age.

11 and 12. Cases of girls becoming mothers at the age of 13 and 14 are not uncommon. In our opinion early motherhood is responsible for a high maternal and infantile mortality, as also for the prevalence of diseases like anaemia, tuberculosis, etc.

13. Yes, generally among the educated classes.

14. We feel there is a growing opinion amongst women in our part of the country not only against early consummation, but also against early marriages.

15 and 16. There are often difficulties in determining the age of girls, and we believe these would be considerably minimised by enforcing compulsory registration of births and by raising the Age of Consent to at least 16 years against husbands and 18 against strangers.

17. Yes, we would separate the two offences.

We are of opinion that the raising of the marriageable age to 16 would solve the difficulty of enforcing punishment in cases of husbands. The punishment outside marital state may be the same as at present as laid down in the Indian Penal Code. We are of opinion that the punishment of cases in marital state should be lighter than it is at present.

18. Yes, we believe that in marital cases, the trial should be conducted in camera.

20. We are of opinion that Penal legislation alone will not be effective, therefore we recommend the fixing of minimum age for marriage, as well as raising the Age of Consent because public opinion—at least in Bombay—is sufficiently developed in favour of both these safeguards.

21. Certainly, education and social propaganda greatly contribute towards the progress of Social Reforms, but experience in the past has shown that the progress of Social Reform cannot be accelerated without the help of Social Legislation.

We would therefore recommend Penal Legislation which would also strengthen the hands of the Social Reformers.

**Written Statement, dated the 27th August 1928, of Rao Saheb GULABCHAND HIRALAL and SETH KASHINATH MULCHAND, Dhulia, West Khandesh.**

1. There is no dissatisfaction with the state of the law as to the Age of Consent. The dissatisfaction is only confirmed to educated classes.

2. We are of opinion that some advance should be made on the present law. Amongst our community, the marriage takes place generally at the age of 10 to 12 of girls and 12 to 15 of boys. The early marriages tend to early maternity and the mortality amongst our infants and young women is great. The number of child-widows in our community is great and their

state is pitiable. Owing to existence of child-marriage system, early consummation of marriage and other evil social customs, our community is not progressing well and unless legislation comes to our aid, we are of opinion that no progress will be made. Our community is backward in social reforms and consequently the progress will be very slow. So our opinion is that legislation should be resorted to in order to prevent infant mortality and early deaths of mothers. The raising of the Age of Consent will also prevent to some extent the evil custom in our community of selling young girls for marriage to old and weakly men in our community. The proper age to take up the responsibility of motherhood is 16. So the law of Age of Consent by a woman ought to be advanced.

3. The crimes of rape and seduction are not frequent in our district. The amendment of the law made in 1925, had no effect on the crimes of this class. By raising the Age of Consent to 16 I think the crimes of rape and seduction will decrease to a great extent.

4. The raising of the Age of Consent within marital state to 13 years has been so far effective in raising the age of marriage of a girl from 8 years to 10 years, in our community. But it has not been effective in protecting the married girls against cohabitation with husbands within the prescribed limit. In our community there is an evil custom of sending married girls to their husbands for cohabitation on the very day of the marriage. The public opinion in our community is slowly awakening about this evil in our community owing to education in our community. Our opinion is that the Age of Consent within the marital state should be raised to 14 years complete.

5. The usual age at which girls attain puberty in our community is 13 or 14. The different ages do not differ owing to different castes and communities but are dependent on the means of circumstances of the family or both.

6. Cohabitation is common in our community before puberty, also soon after puberty or before the girl completes 13 years. The cases do not at all come to Court as leaders of our community and generally all men in our community hush up these matters owing to following of the blind customs of our community.

7. In our community religious injunctions and like quotations in religious books play most important part of early consummation of marriages. There is general ignorance amongst women of our community who are generally under dominence in religious matters of priests who tread upon their ignorance by quoting religious injunctions. One of us, viz., Rao Saheb Gulabchand Hirralal is Jain. In the Jain religion as far as we know, there are no religious injunctions for early consummation of marriages. But owing to some social customs prevailing in both Jain and Hindu Marwadi Communities the evil custom of early marriage and early consummation of marriage have been crept into Marwari Jain Communities. We are of opinion by progress of education in our community, people will not attach undue importance to religious injunctions.

8. Gaona ceremony is always performed in our community as it is a custom. The ceremony is generally performed after consummation of marriage. The ceremony is generally performed after puberty.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. We are of opinion that at the completion of 16 years of age a girl's physical development is considered enough to justify consummation without injury to her health.

10. In our opinion a girl of eighteen years would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. We are not in a position to give details of all injuries suffered in cases of cohabitation before puberty. But it is a common experience in our community that cohabitation before puberty and before full physical development of a girl though after puberty ruins the health of the girl and brings her to early death and affect the health of her progeny prejudicially.

12. We consider early consummation and early maternity are responsible for high maternal and infantile mortality. The progress of the people is vitally affected by this mortality and intellectual and physical progresses of the people are impeded. So steps should be taken to awaken public opinion to the above evils and also the aid of legislation should be taken to stop the evils mentioned above.

13. There has not been much development of public opinion in our part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925. We are of opinion that the general public is apathetic on this question. The dissatisfaction is confined only to the educated classes and in vast country like India, this state of things is natural.

14. Women in our community favour early consummation of marriage for children. In our community owing to prevalence of orthodox ideas of religion the desire for a son is very great and so there is a tendency for early consummation of marriage.

15. It is difficult to determine the age of a girl between 12 or 13 or between 13 or 14. During this period even a competent authority may commit mistakes. In the absence of reliable evidence, it is difficult to determine the age of a girl. We cannot suggest any means to remove or minimise these difficulties.

16. We are of opinion that the difficulties will, to a certain extent, be minimised if the Age of Consent is raised to 14 years.

17. We would separate extra-marital and marital offences into different offences. We would recommend the maximum punishment for marital offences should be two years' simple imprisonment.

18. We would not make any difference in the procedure of trial for offences within or without the marital state.

19. We cannot suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion.

20. We consider that the law of fixing the maximum age of marriage would be more effective and the public opinion would be more favourable to this legislation. In our opinion the minimum age for marriage should be 13. Still side by side this legislation of fixing minimum age for marriage, the present law of Age of Consent should be changed.

21. The strengthening of Penal Law is required to aid the progress of Social Reform. No doubt Social Reform movement is required. We keenly feel the want of such a movement amongst our community. The dominance of religious prejudices and long established customs is such that the Social Reform cannot progress much in our community. Still pioneer efforts are being made by leaders of our community for Social Reforms. Spread of education especially amongst women will be of much use. Attention of leaders should be drawn to this social propaganda. By strengthening the Penal Law we are of opinion that the reformers of our community will be encouraged to push on their Social Propaganda.

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Written Statement, dated the 29th August 1928, of Miss P. M. KANGA, M.Sc., Joint Honorary Secretary, Bombay Presidency Women Graduate's Union, Bombay.

With respect to the advanced public opinion especially among the educated classes and social workers, the Age of Consent as at present laid down is considered too low.

2. The increase in the Age of Consent from 12 to 13 was very insignificant as the physical development of girls of 12 and 13 years does not materially

7. Yes: the early consummation of marriage usually at puberty but sometimes even earlier (but in any case after the completion of the tenth year) is enjoined by the smritis. Consummation at puberty is compulsory: before it is permissive. As regards the penalty for the breach of this law, it is merely said that man incurs the sin of killing a foetus thereby (of *Nirnaya-sindhu* N. S. P. Act of 1926, pp. 172—174).

8. "Garbbadhana" means impregnation. It is a Sanskara (ceremony) which ought to accompany the first act of 'Impregnation'. This is to be performed immediately after the attainment of puberty. But now-a-days this is postponed for several months, even after consummation. A penalty however is laid down if conception takes place as a result of consummation before the performance of the Garbbadhana ceremony.

9. It depends upon the age at which puberty is reached. I think that 12 or 13 years is not justifiable. Most Hindus are well developed at 15 or 16 years.

10. A due realization of the consequences involved a realisation not only of the girl's own health but of the health of progeny and the effect on the physique of the community. 16 seems to be not too high for this.

12. As laymen we consider this must be so if children are born from immature parents.

13. Probably it is confined to the most highly educated classes.

14. Educated women do not.

15. We do believe that difficulties in regard to the determination of the age of girls arise in Courts of law. Medical opinion of experts though entitled to great respect is met by argument that an expert may after all make the mistake of under estimating or over estimating the age of girl in the absence of reliable data.

The remedy lies in a stricter enforcement of the law in regard to the registration of births.

16. The higher age would minimise the chances of errors.

17. On this point we have already expressed our opinion on Sir Harisingh Gour's bill which we heartily support and we adhere to it.

The following is an extract from our opinion; "In view of Dr. Gour's proposal to create a new offence by adding a fresh Section 376A, we welcome the proposal in Section 3 of his bill to omit certain words from the present Section 376 is as much as sexual intercourse by a man with his own wife who is under 13 will still continue to be punished with the heavy sentence provided for the offence of rape".

18. Our answer is in the negative.

20. Our answer to the first part of the question is in the negative. We shall welcome the raising of age as preparatory to legislation for fixing the minimum age for marriage.

Possibly legislation fixing the minimum age of marriage may be more effective.

21. The two should go together.

Legislation far in advance of social practice is demoralising.

**Written Statement, dated the 29th August 1928, of Mr. HIRALAL DAYABHAI NANAVATI, Solicitor, Bombay.**

1. So far as I am aware there is dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. The inclusion of cases of sexual intercourse between a man and his wife should not find a place in criminal law. While in case of a woman who is a consenting party with a man who is not her husband, the age

should be higher than it is at present. It must, at the same time, be stated that physical constitutions of women in India differ according to the climatic conditions in different provinces and according to surrounding circumstances in towns or villages.

2. Having regard to what is stated above my opinion is that the age of an unmarried woman when her consent is taken for sexual intercourse and rape should be raised to 18 and not 14. The reason being that a girl at the age below 18 should not be considered to be so intellectually mature as to give her free consent.

3. So far as I am aware crimes of seduction or rape are not very frequent in Gujarat to which part I belong. But so far as I am aware such crimes are more frequent in Sind. I believe raising the Age of Consent to 14 has not been successful in reducing cases of rape outside the marital state. If the age is raised further, I think the law would be more effective.

4. So far as I am aware in towns and in cities and amongst the higher classes of Hindus of which I have experience the cohabitation generally takes place after the age of 18 and it is therefore not possible to find out whether the amendment of 1925, has had any effect.

5. It is very difficult to give a particular age at which girls attain puberty in India. It must be admitted that there are various factors which are working in the attainment of the puberty of girls. Girls in towns and cities attain puberty earlier than the girls living in villages and in open air and who are accustomed to hardwork. Puberty is also regulated by climatic conditions which vary so much in India. The attainment of puberty also depends upon education, food, associations and other surroundings. The girls who are being educated and who are accustomed to read novels attain puberty much earlier than girls who do not take education at all or whose education is more conservative than the present day education which is imparted to boys and girls alike. The attainment of puberty no doubt differs in classes of society in as much as the girls of richer classes whose dietry is more complex than those of the poorer classes, attain puberty earlier.

6. (1) No.

(2) Yes.

(3) Not general.

So far as I believe no such cases come to Court.

7. There is no religious injunction which requires consummation of marriage before puberty and so far as I am aware there is no such practice. As to the consummation of marriage at puberty wherever it exists it is I believe due to religious injunction.

8. Except in very strict orthodox families, garbhadhan ceremony is not performed in Gujarat.

9. I do not consider that the attainment of puberty (thereby meaning menstruation) is by itself a sufficient indication of physical maturity to justify consummation of marriage. As I have already stated it is impossible to lay down any strict rule based on age at which a girl's physical development should be considered to be enough to justify consummation without injury to her own health and that of her progeny. This will depend on the circumstances of each particular case. In some cases a girl's physical development at the first appearance of puberty would be considered enough to justify the consummation without injury to her own health and that of her progeny: while in others it would not be so.

10. As already stated in the former replies it is not possible to lay down a particular age at which one can say a girl in India would be competent to give an intelligent consent to cohabitation with the due realization of consequences. This will depend upon her physical development and her natural propensities together with the general knowledge which she obtains from the society within which she moves.



12. No doubt high maternal and infantile mortality do affect intellectual as well as physical progress of the people, but I do not consider that high maternal and infantile mortality is due alone to early consummation and early maternity, but to various other causes which are economic and educational. 50 years ago marriages were celebrated much earlier than now and consummation also took place earlier than at present yet there was no high maternal or infantile mortality and the race was intellectually as well as physically strong. The true reason therefore of high maternal and infantile mortality is in other direction, viz., that the country is growing poorer and poorer every day and the prospective mothers and newly born infants have not got sufficient means of subsistence. Unless therefore the country can be better fed, all labour for better breeding would be of no avail.

13. After the amendment of the law in 1925, it must be admitted that there has been further development of public opinion amongst educated classes in important cities and towns.

14. So far as I am aware women in my part of country favour consummation of marriage for their children at the proper time having regard to surrounding circumstances.

15. Sometimes difficulties have been experienced in determining the age of girls in connection with offences under Sections 375 and 376. I am unable to suggest means to remove or minimise these difficulties.

16. Just as you raise the age the difficulty or margin of error in determining it would be reduced. I am however against any legislation with respect to married girls.

17. As already stated I would not class the marital wrong as an offence. Thus according to me the offence will be one with reference to an unmarried girl. The maximum punishment under Section 376 is in my opinion alright.

18. Having regard to the view expressed by me this question does not arise.

20. I do not think it necessary for me to answer this question. I am however answering it merely on the relative merits of the 2 methods referred to therein. I think that the legislation fixing the minimum age of marriage would be more effective than any penal legislation fixing a higher Age of Consent for marital cases. In my opinion neither of the two alternatives would be in consonance with the large majority of the Hindu public opinion, which is generally conservative, but is at the same time progressive having regard to the surrounding circumstances.

21. I would rather prefer to secure the object in view by means of education and social propaganda than by means of penal law so far as the marital state is concerned.

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**Written Statement, dated the 2nd September 1928, of Mr. KHURSHED F. NARIMAN, B.A., LL.B., M.L.C., Bombay.**

1. Certainly. I do think that amongst all educated members of the various Indian Communities, and amongst a large majority of thinking even if not educated persons, there is a strong dissatisfaction (with the state of law as to the Age of Consent in Sections 375 and 376, Indian Penal Code).

2. (i) No circumstances to my knowledge exist to justify the retention of the Age of Consent as it is.

(ii) There are various circumstances which urgently demand an advance on the present law.

(a) It has to be remembered that the protection that the English Law gives to an English girl in England has been the outcome of mature consideration and experience on the part of English legislators. The same reasons apply with stronger force to Indian girls. It is not to be believed

that because the Indian girl attains puberty, on account of climatic conditions, a couple of years earlier than the English girl, that therefore she does not require the protection of the law up to the same age as the English girl is given it. Though puberty is reached in India early enough, the body is far from being ready for an indulgence in sexuality. No stronger reasons to prove this simple truth is necessary than the fact of the birth of so many rickety children and the high death rate amongst them, with the corresponding loss of vitality and physical debility brought on the young mothers by premature motherhood, which loss of vitality and debility leaves its indelible effects on the physical constitution of the future children to be born to those mothers with the result that a whole race of weak and dilapidated generation grows up. It is of prime importance to have healthy mothers if a healthy progeny is sought for. The enervating effects of the Indian climate demand that the time for the commencement of sexual intercourse should even in cases of marriage be put off longer than is the case in the bracing climate of Europe.

3. Without having reliable statistics before me, but judging from the reports of crimes of seduction or rape outside the marital state and from my own knowledge of the Criminal Courts of this City, I believe that such cases have rather tended to increase in spite of the raising of the Age of Consent to 14 years by the 1925 legislation.

I do not think the remedy lies in merely seeking to make the existing law (as amended in 1925) effective, but without a further amendment of the law further raising the Age of Consent to eighteen years in the marital state and extra-marital state, adequate protection could not be given to young girls.

4. I am unable to say whether the raising of the Age of Consent within the marital state to 13 years by the amendment of 1925 has been at all effective in any of the 3 ways mentioned in the question. But I would certainly suggest the raising of the Age of Consent even within the married state to at least 18 years. I am fairly of opinion that sexual intercourse before the completion of 18 years is detrimental to the health of any average girl in this country and consequently of the children born of such intercourse and ought to be stopped by a positive and clear penal legislative enactment. I do not think that any stimulation of public opinion would meet the ends of the case, in view of the immense ignorance, prejudice and wrong ideas wrongly given the sanction of religion to, that exist and are generally entertained.

5. I have no source of this information at my command.

6. (i) I am not possessed of facts.

(ii) In the marital state, I am afraid, cohabitation is common soon after puberty.

(iii) Have no particulars.

7. I certainly do not propose to travel into the sphere of other religions to mine: but I can say from my information that there is no religious injunction either among the Zoroastrians or Jews or Christians or Hindus or Mohamedans to consummate marriage at puberty—certainly not before.

The second part of this question is answered by the first.

8. Have no information.

9. Certainly not. I consider it barbarous brutality to consummate marriage on the attainment of puberty, and that it cannot be justified on any grounds whatever whether of religion or superstition, or physical development or the health of the mother or the child or well-being of the community.

I may refer the Committee to my answers to the 1st question. I consider that no marriage in this country would be consummated before 18 years.

10. I think not before 18 years, at the earliest. My reasons are that the girl in India has generally not the education or knowledge to realise the

12. No doubt high maternal and infantile mortality do affect intellectual as well as physical progress of the people, but I do not consider that high maternal and infantile mortality is due alone to early consummation and early maternity, but to various other causes which are economic and educational. 50 years ago marriages were celebrated much earlier than now and consummation also took place earlier than at present yet there was no high maternal or infantile mortality and the race was intellectually as well as physically strong. The true reason therefore of high maternal and infantile mortality is in other direction, viz., that the country is growing poorer and poorer every day and the prospective mothers and newly born infants have not got sufficient means of subsistence. Unless therefore the country can be better fed, all labour for better breeding would be of no avail.

13. After the amendment of the law in 1925, it must be admitted that there has been further development of public opinion amongst educated classes in important cities and towns.

14. So far as I am aware women in my part of country favour consummation of marriage for their children at the proper time having regard to surrounding circumstances.

15. Sometimes difficulties have been experienced in determining the age of girls in connection with offences under Sections 375 and 376. I am unable to suggest means to remove or minimise these difficulties.

16. Just as you raise the age the difficulty or margin of error in determining it would be reduced. I am however against any legislation with respect to married girls.

17. As already stated I would not class the marital wrong as an offence. Thus according to me the offence will be one with reference to an unmarried girl. The maximum punishment under Section 376 is in my opinion alright.

18. Having regard to the view expressed by me this question does not arise.

20. I do not think it necessary for me to answer this question. I am however answering it merely on the relative merits of the 2 methods referred to therein. I think that the legislation fixing the minimum age of marriage would be more effective than any penal legislation fixing a higher Age of Consent for marital cases. In my opinion neither of the two alternatives would be in consonance with the large majority of the Hindu public opinion, which is generally conservative, but is at the same time progressive having regard to the surrounding circumstances.

21. I would rather prefer to secure the object in view by means of education and social propaganda than by means of penal law so far as the marital state is concerned.

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**Written Statement, dated the 2nd September 1928, of Mr. KHURSHED F. NARIMAN, B.A., LL.B., M.L.C., Bombay.**

1. Certainly. I do think that amongst all educated members of the various Indian Communities, and amongst a large majority of thinking even if not educated persons, there is a strong dissatisfaction (with the state of law as to the Age of Consent in Sections 375 and 376, Indian Penal Code).

2. (i) No circumstances to my knowledge exist to justify the retention of the Age of Consent as it is.

(ii) There are various circumstances which urgently demand an advance on the present law.

(a) It has to be remembered that the protection that the English Law gives to an English girl in England has been the outcome of mature consideration and experience on the part of English legislators. The same reasons apply with stronger force to Indian girls. It is not to be believed

that because the Indian girl attains puberty, on account of climatic conditions, a couple of years earlier than the English girl, that therefore she does not require the protection of the law up to the same age as the English girl is given it. Though puberty is reached in India early enough, the body is far from being ready for an indulgence in sexuality. No stronger reasons to prove this simple truth is necessary than the fact of the birth of so many rickety children and the high death rate amongst them, with the corresponding loss of vitality and physical debility brought on the young mothers by premature motherhood, which loss of vitality and debility leaves its indelible effects on the physical constitution of the future children to be born to those mothers with the result that a whole race of weak and dilapidated generation grows up. It is of prime importance to have healthy mothers if a healthy progeny is sought for. The enervating effects of the Indian climate demand that the time for the commencement of sexual intercourse should even in cases of marriage be put off longer than is the case in the bracing climate of Europe.

3. Without having reliable statistics before me, but judging from the reports of crimes of seduction or rape outside the marital state and from my own knowledge of the Criminal Courts of this City, I believe that such cases have rather tended to increase in spite of the raising of the Age of Consent to 14 years by the 1925 legislation.

I do not think the remedy lies in merely seeking to make the existing law (as amended in 1925) effective, but without a further amendment of the law further raising the Age of Consent to eighteen years in the marital state and extra-marital state, adequate protection could not be given to young girls.

4. I am unable to say whether the raising of the Age of Consent within the marital state to 13 years by the amendment of 1925 has been at all effective in any of the 3 ways mentioned in the question. But I would certainly suggest the raising of the Age of Consent even within the married state to at least 18 years. I am fairly of opinion that sexual intercourse before the completion of 18 years is detrimental to the health of any average girl in this country and consequently of the children born of such intercourse and ought to be stopped by a positive and clear penal legislative enactment. I do not think that any stimulation of public opinion would meet the ends of the case, in view of the immense ignorance, prejudice and wrong ideas wrongly given the sanction of religion to, that exist and are generally entertained.

5. I have no source of this information at my command.

6. (i) I am not possessed of facts.

(ii) In the marital state, I am afraid, cohabitation is common soon after puberty.

(iii) Have no particulars.

7. I certainly do not propose to travel into the sphere of other religions to mine: but I can say from my information that there is no religious injunction either among the Zoroastrians or Jews or Christians or Hindus or Mohamedans to consummate marriage at puberty—certainly not before.

The second part of this question is answered by the first.

8. Have no information.

9. Certainly not. I consider it barbarous brutality to consummate marriage on the attainment of puberty, and that it cannot be justified on any grounds whatever whether of religion or superstition, or physical development or the health of the mother or the child or well-being of the community.

I may refer the Committee to my answers to the 1st question. I consider that no marriage in this country would be consummated before 18 years.

10. I think not before 18 years, at the earliest. My reasons are that the girl in India has generally not the education or knowledge to realise the

consequences, and amongst the higher classes her being kept in more or less seclusion, prevents her from doing so.

11. Both within my experience in the profession I belong to and generally, I have known cases in which cohabitation both before and after puberty but before full physical development of the girl has resulted in serious injury to her health and very prejudicially affected her issue. Such instances could be found in a large number in the Parsi, Christian, Hindu and Mohamedan Communities. The girls soon develop tuberculosis, or if not actual tuberculosis, they lose their health and vitality to such an extent that later child-births would drive her into tuberculosis or even death. It is to be remembered that the Indian girl has not the opportunity of going in freely for physical exercise and sports so that her constitution may develop on healthy lines towards a young, sturdy, agile and virile girlhood.

The symptoms of disease and debility are particularly observed amongst girls who become mothers under 16 years of age and in some cases even between 16 and 18 years. The injury sustained by her in some instances has been so serious that she is not recommended to have further children and even cohabitation with her husband is considered inadvisable.

12. I do consider that early consummation and early maternity is largely responsible for the early and premature death of the mothers and the children. The impaired vitality of the mother on account of early maternity also materially affects the vitality and health of subsequent children born. The result is that such mothers are a physical wreck at early age and apart from losing the capacity to produce healthy and sturdy progeny, also lose the capacity of efficiently attending to and carrying out their domestic duties as wives, mothers and house-keepers.

13. I should think there is such opinion amongst the enlightened members of the various communities; but those suffering from distorted religious notions, place the health and well-being of the mother and child in the background and no physical or moral deterioration concerns them.

14. Better educated and well-informed women do not favour early consummation of marriage of their children. The orthodox and unlettered women on the contrary are prepared to offer as sacrifice the very lives of their children to satisfy their ill-conceived religious notions.

15. This difficulty is often experienced, particularly when the girls are born at a place where no record of birth is regularly maintained. Medical Certificate itself is often unsatisfactory, especially when the case is on the borderland.

Some sort of a record of births in these districts under Government supervision is recommended.

16. The difficulty or margin of error will certainly in my opinion be considerably minimised if the Age of Consent is raised above eighteen. Under 18, it will perpetuate.

17. Certainly marital and extra-marital offences must necessarily be separated into different offences, for while there is at least the sanction of marriage in one case, there is none in the other. In the marital state, the punishment should not be more than 1 year if the wife is above 16 years. In the extra-marital state, the punishment under Section 376 Indian Penal Code may be allowed to remain leaving a full exercise of discretion by the judge, but when the girl is above 16, the punishment should not be more than three years and fine.

18. I think the cases of marital state may be allowed to be disposed by the Presidency Magistrates, or 1st Class Magistrates, except in cases where the Magistrate thinks he cannot give adequate punishment in the circumstances of the particular case.

The extra-marital cases should all be tried by the Court of Session or High Court as the case may be.

19. I do not think any better safeguards than those existing could be suggested for the present.

20. I do think that penal legislation would be more effective and that without it, the suggested reform and protection would be frustrated and nullified.

21. I would certainly rely on the strengthening of the penal law to secure the desired object, and have no confidence in attaining it by means of education and social propaganda.

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**Written Statement, dated the 5th September 1928, of Mr. S. S. PRADHAN, President, District Local Board, Thana.**

With reference to your letter No. 42 A. C. C. of 25th July 1928, I have the honour to give below the views of the Standing Committee of this Board, which met on the 15th of August for consideration of the questionnaire issued by you. I may state here that I am agreeable to depute a representative of this Board to give oral evidence if necessary.

There is a strong feeling amongst the educated people in this district that the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code is too low and needs to be increased because with the advance of civilization girls have been moving freely in society either for higher education or for social work and it is therefore in fitness of things that they must be afforded adequate protection.

The amendment of the law made in 1925 had very little effect in preventing or reducing the cases of rape, etc., outside the marital state, because the public have been ignorant of the state of law with the result that the amendment has not been in any way a deterrent to them. It is therefore absolutely necessary that a wide publicity should be given in this respect which will effectively reduce the number of crimes. Similarly the amendment of law so far it concerned the marital state has not protected the married girls against cohabitation with husbands within the prescribed age limit. In this case too education and publicity of the law in force alone will afford the married girls adequate protection.

Cohabitation before puberty which is generally attained at the age of 13 is not common in this part of the country but it is so, soon after cohabitation takes place even before the age of 13 in cases where girls attain puberty but not otherwise. Offences of rape within the marital state may not be few but the cases never go to the court because they are not easy of detection.

Consummation of marriage ought to be postponed till the age of 16, although girls may attain puberty much earlier. The attainment of puberty is just the state where physical development commences and it is no indication of physical maturity of girls. Stunted growth of girl-wife and her emaciated progeny are the spectacles not uncommon to be witnessed in cases where consummation takes place at a very early age. This is not all. The girl-wife leads a life misery and life-long agonies consequent upon the many diseases which haunt her immediately after her first delivery. The high infant and maternal mortality as well as the physical and intellectual regress of the people can be to a great extent attributed to the early consummation of marriage. It is however a satisfactory feature that even amongst women there has been a desire to postpone consummation of marriage to the age of 16.

The public opinion is in favour of extension of Age of Consent within marital and extra-marital case. In determining the Age of Consent with respect to the latter, it should be considered not only whether a girl is capable of giving her consent but also whether a girl is in a position to refuse her consent. Having regard to all these circumstances the minimum age at which a girl in India should be considered as competent to give her consent should be laid down at 16.

Difficulties are many a time experienced in determining the age of the girls in rape cases, which however will be greatly obviated if birth registers

are carefully maintained. After the attainment of puberty which generally takes place at the age of 13 there is a distinct change in the stature and physics of the girls and consequently the difficulty in determining the age will be materially minimised if the Age of Consent is raised to fourteen years.

The offence in marital cases should be constituted under a separate section of the Indian Penal Code. No change need be made in the punishment provided for the offence in the existing laws. The procedure however should be different in marital cases and no cognizance of the offence should be taken except on the complaints of the girl herself or of such persons as would have been her guardians if she were unmarried, if she is 13 years of age or above. The procedure in marital cases if the girl is under 12 should be identical with that in extra-marital cases.

The committee think that although fixing the age of marriage will be safe and convenient, it will not be in consonance with the public opinion. Raising the Age of Consent is likely to minimise the evils of early marriage.

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**Written Statement, dated the 4th September 1928, of Mr. JOSEPH BOCARRO, I.S.O., Registrar, Bombay Medical Council.**

With reference to the correspondence ending with your letter No. 110 A. C. C., dated the 8th August 1928, on the subject of the questionnaire of the Age of Consent Committee, I am directed to inform you that the Bombay Medical Council before whom the papers were placed at their meeting held on the 4th September 1928 are of opinion that from a medical point of view the Age of Consent should be 18.

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**Written Statement, dated the 30th August 1928, of Dr. G. V. DESHMUKH, M.D. (London), F.R.C.S., President, Municipal Corporation, Bombay.**

1. It cannot be disputed that there is a strong feeling in the country in general and in the City of Bombay in particular, that the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code is too low. Even in 1891, 12 years was considered too low, and since then there has been a distinct change in public opinion in favour of a substantial advance on the present law.

2. From a physiological point of view the increase from 12 to 13 was really of no consequence as the physical development of a girl of 13 does not differ materially from that of a girl of 12. On physiological grounds alone, therefore, a case could be made out for a substantial increase in the present Age of Consent, but apart from these grounds, there are other reasons which justify an advance on the present law of the Age of Consent. Social conditions of the present day are quite different from what they were when the legislation regarding the Age of Consent was enacted in 1891. In the first place, there has been a steady rise in the age of marriage of girls. Secondly, owing to the increasing popularity of higher education among women, girls remain unmarried now-a-days upto a late age. Further owing to changes in economic conditions of the country, there is a growing increase in the employment of women in factories and other occupations. The result is that young girls are moving about freely, old restrictions on social intercourse between men and women are rapidly disappearing, and minor and inexperienced girls are more exposed to risks than heretofore. Having regard to all these circumstances, it is absolutely necessary to revise the law of the Age of Consent, not only on the grounds of public health, but also in the interests of personal safety of young girls. The Corporation are, therefore, of opinion

that the Age of Consent against strangers should be raised to 18. Owing to the above-mentioned changes in the social and economic life of the people, it is desirable that minor girls should be given as much protection as is possible under the law of the land in respect of offences against their persons. A person who is not regarded as competent to dispose of her property under the law before the age of 18 should not be regarded before attaining that age as being capable of disposing of her person, especially as such action on her part is liable to result in irreparable damage to her future life and prospects. In determining the Age of Consent, the Legislature should consider not only whether a girl is capable of giving her consent, but also whether a girl is in a position to refuse her consent. As regards husbands, the main factor to be considered is the health of the girl-wife and also of the progeny and in fixing the Age of Consent in this case, it is not possible to ignore altogether the various religious and social customs prevailing in India. The Corporation would therefore recommend that the Age of Consent be fixed at 15 against husbands.

4. The Corporation are not in a position to say whether the amendment of 1925 has been effective in protecting married girls against cohabitation with husbands within the prescribed age limit of 13 by postponing the consummation of marriage. There is no doubt, however, that since the amendment of 1925 public opinion has advanced in that direction, and that at present there is a general consensus of opinion that the age of marriage for girls should be increased beyond 13.

10. Perhaps only psychologists can give a definite answer to this question, but the Corporation feel that generally 16 is the age at which a girl may be considered competent to give an intelligent consent to cohabitation. It might then be argued that even husbands should be prohibited from cohabiting with girl-wives under 16. But as stated in reply to question No. 2, it is difficult to sweep aside centuries old social and religious customs all at once, and therefore the Corporation have recommended in their reply to Question No. 2 that the Age of Consent against husbands should be 15.

12. The Corporation are of opinion that early consummation and early maternity are mainly responsible for high maternal and infantile mortality. It cannot be denied that such mortality is more common in communities among whom early marriages followed by early consummation are frequent. Further the Corporation are of opinion that premature consummation of marriages must adversely affect the intellectual and physical progress of the people. Children born of early maternity are in most cases weak and ill-developed, and cannot shake off their congenital debility even after they grow into manhood. Early maternity also tells on the health of the mothers, who in consequence are very often affected by wasting diseases like Anæmia and Tuberculosis.

13. Although sufficient time has not elapsed to warrant any definite expression of opinion, it cannot be denied that public opinion has developed further in favour of raising the Age of Consent. It is difficult to say whether such development is general or is confined to certain classes, but it is possible to state that as far as extra-marital cases are concerned public in general would welcome a substantial increase in the present Age of Consent, and as regards marital cases, it will be safe to assert that educated public opinion is generally in favour of extension.

14. Judging by the articulate opinion as expressed at various public meetings held under the auspices of public bodies of women, it can be safely asserted that women in general are against early consummation of marriages for their children.

15. In a City like Bombay practically no difficulties are experienced in determining the age of girls as, besides medical evidence, there is a fairly efficient system of registration of births, and of maintaining vaccination certificates, school certificates, etc. But in the mofussil, where the above facilities are not always available, the system of registering births may be made compulsory, and strictly enforced so that a medical certificate may not be the sole evidence for proving the age.



16. The Corporation are of opinion that a higher Age of Consent will minimise the chances of errors being committed in determining the age of girls.

17. The Corporation have already dealt with the question of differentiating in Ages of Consent for marital and extra-marital cases. As regards the offences, the Corporation are of opinion that the offensee in marital cases should be constituted under a separate section of the Indian Penal Code. As regards punishment the Corporation do not recommend any change in the existing law.

18. As regards procedure the Corporation are of opinion that in marital cases cognizance should not be taken except on the complaint of the girl-wife herself or of such persons as would have been her guardians if she were unmarried.

20. The Corporation are of opinion that penal legislation fixing the minimum age of marriage will not by itself be effective in protecting girl-wives from early consummation. For, after all, Mr. Sarda's Bill may not put a stop to all child marriages. Therefore, it is desirable to have also penal legislation fixing a higher Age of Consent for marital cases. As far as the Corporation are in a position to judge, they think that public opinion in the City of Bombay is in favour of fixing a minimum age for marriage as well as for raising the Age of Consent for marital cases.

21. While it is true that the progress of social reform depends mainly on education and social propaganda, at the same time it must be obvious that the pace of reform cannot be accelerated without the aid of social legislation.

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**Written Statement, dated the 6th September 1928, of the Secretary,  
Grain Merchants' Association, Bombay.**

I am directed by my Committee to acknowledge receipt of your letter of the 29th August inviting opinion on the Age of Consent Bill.

My Committee instead of replying to each question separately give its general opinion as under:—

My Committee are of opinion that the Age of Consent for marital case may be retained as it is at present. In such cases the very relation is such that very rarely the cases are likely to come to Court. Although there are early marriages in several castes and communities, the consummation of marriage rarely takes place before maturity and in educated and advanced classes, girls are married after they are fifteen or sixteen years of age. In these days women do not favour early consummation of marriage for their children. Even in backward and uneducated classes living in villages the consummation of marriage takes place after girls attain 15th or 16th year. Although girls attain puberty generally at the age of 14 years consummation of marriage now-a-days is not guided by religious injunctions. In consummation of marriage people do take into consideration the constitution and physical development of girls and puberty is not the only standard for this purpose.

My Committee think that instead of strengthening the penal law for marital cases, the object would be better and more effectively attained by means of education and social propaganda as most people are ignorant of the existing penal law which has absolutely no effect as far as marital cases are concerned and they recommend that for marital cases, the Age of Consent should be retained as it is under the present law and the proposed insertion of Sections 376-A should be dropped.

For cases outside the marital state, the Age of Consent must be raised to 18 years as girls now-a-days attend Schools and Colleges, move freely in society and in public and marry at a later age and it is necessary to protect such young and inexperienced girls from evil persons.

**Written Statement, dated the 9th September 1928, of Rao Saheb R. V. YANDEKAR, J.P., M.L.C., General Secretary, Maratha Educational Conference, Bombay.**

1. There is no dissatisfaction but when a case of illicit intercourse with a girl under 16 occurs people cry for severe punishment.
2. I think the law as proposed should be passed. The age of 13 is not sufficient for a girl to be a mother and therefore it is necessary in her interest and in the interest of the future child to raise her age.
3. The cases are not frequent.
4. I think the amendment of 1925 is useful as it has succeeded indirectly in raising marriage age.
5. The age at which girls attain puberty is between 13 and 16. The earlier age is for urban areas in the villages puberty is attained later.
6. Cohabitation takes place soon after puberty. It may take place even before the girl completes 13 years. No cases come to the Court.
7. I do not think there is any religious injunction for Consummation of marriage before puberty and I do not think that Consummation soon after puberty is obligatory.
8. Garbhadan ceremony is performed in educationally advanced Communities and among the well-to-do families of the others. It is performed after the attainment of puberty.
9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I think the girl should complete 16 years of her age before Consummation of marriage takes place.
10. It is very difficult to give an answer to this question. In the case of a married girl, no consent is necessary for her husband. In the case of others it is an offence more or less heinous.
12. The reply is in the affirmative.
14. The reply is in the negative.
19. I do not want to suggest anymore safeguards.
20. I consider that penal legislation fixing the higher Age of Consent over marital cases is as necessary as legislation fixing the minimum age of marriage.
21. Both.

**Written Statement, dated the 12th September 1928, of Mr. A. N. SURVE, B.A., LL.B., J.P., Fellow, University, Bombay.**

1. So far as the general public is concerned, there is no dissatisfaction; but among the social reformers and other enlightened persons, who give a thought to this subject, there is considerable dissatisfaction. There is no dissatisfaction among the general public, because the bulk of it is incapable of knowing the merits and demerits of the subject, and others, though capable of knowing them, never give it a thought.
2. (1) The only reason for retaining the law in its present state, is the agitation which the interested and other bigotted orthodox persons may set up. But that is no valid reason for not introducing the reform.
- (2) The Age of Consent, viz., 13 and 14 for marital and extra-marital offences respectively is too low, and in the interests of health and physique of future generations it is not only desirable but imperative that it should be advanced.
3. Stated later below.

4. I am not aware of either (1) postponement of consummation, or (2) stimulation of public opinion or (3) putting off marriage beyond 13 years in consequence of the amendment of law in 1925.

Knowledge of their own rights on the part of women is the only means which could be effective. Steps should be taken for the spread of education and the abolition of early marriages. These would help women to gain this knowledge.

5. Twelve to sixteen is the usual age at which girls attain puberty. Most attain it at the lower limit indicated. It is only in exceptional cases that puberty is deferred to the higher limit.

Speaking for the Konkan area, the age at which puberty is attained does not differ in different castes in marked degrees. Of course, girls from well-to-do families living a happy life attain it much earlier than those whose life is not so happy. Therefore the difference as regards attaining puberty though not marked in different castes is quite marked in the cases richer and poorer classes.

6. (1) Cohabitation, before puberty in all classes of people is not at all common, I should rather say it is very very rare indeed in this part of the country, *i.e.*, Maharashtra.

(2) Cohabitation soon after puberty is universal.

(3) Should a girl attain puberty before she completes 13 years, while living in her husband's house she may be subjected to cohabitation. But such cases are not common.

Generally such cases do not come to court. The only that do are exceptions, where the wife or her parents accuse the husband or his relatives of cruelty or ill-treatment. Such cases are very rare among the Dakshini Hindus, and even among the Gujarathis, their number is small.

7. On this side of the country, I am not aware of any religious injunctions which weigh with the people in the matter of consummation before puberty. Even if there be any, it is not observed.

The practice of early consummation at or after puberty is based partly on the notions of "GARBHADAN" which is one of the sixteen *sanskaras* and partly on the notion of "Bhrunahatya". Both the notions are founded on religious injunctions.

8. Garbhadan is Universally—not only usually—performed (of course by the Hindus) in this part of the country. It usually coincides with consummation of marriage, *i.e.*, consummation and Garbhadan take place on the same day. The latter precedes the former.

It is performed at the first appearance of the menses *after the marriage*. How soon after puberty Garbhadan is performed depends on the celebration of the marriage. The girl may attain puberty—say at 13—but is not married till 16, then her Garbhadan would be performed after she is married, *i.e.*, 3 years after she has attained puberty.

9. I do not consider attainment of puberty, a sufficient indication of physical maturity to justify consummation. No hard and fast rule could be laid down. Each case will have to be considered in relation with its individual circumstances. A girl may be robust and in her case early consummation may not cause injury to her or her progeny. It is not usually the first maternity that breaks the health of the mother. If the succeeding maternities are deferred, the first early maternity may not cause appreciable harm to the girl. But as a safe rule—I consider—that 2 or 3 years should elapse after puberty before consummation takes place.

10. After completion of fifteen years, a girl would be competent to give an intelligent consent to cohabitation.

11. Only one case came under my observation, in which a middle aged man was married to a girl-wife. The husband was eager for consummation and the girl-wife held him in great dread. Soon after they went to live in another place and I had therefore no opportunity to observe what followed.

12. Early consummation does not necessarily lead to early maternity. Early maternity is only one of the factors of high maternal and infantile mortality. It is an accessory cause.

There is no evidence to maintain that early maternity has resulted in vitally affecting the intellectual or physical progress of the people. I have rural areas in view. In the urban areas, the progeny is either short-lived or diseased.

13. Excepting the educated classes, there has been no development of public opinion in favour of extension of the Age of Consent since 1925. The desire for the extension of the age is confined to the educated women and their male supporters. The educated ladies are very keen for the reform, and they are agitating for it in various ways.

14. Women favour consummation immediately after the Garbhadan ceremony; but as it is performed after the marriage and as the age at which marriages now take place has advanced, early consummation, i.e., before 13 years has to a very large extent ceased.

15. Difficulties are experienced in determining age. Compulsory registration of births would go a long way in removing the difficulty. Outside municipal areas, registration of births is very perfunctory. Even in many municipal areas, it is only nominal.

Certificates given by schools are based nominally on the information supplied by parents as regards the age of the child. The statement as to age contained in such certificates are in most cases the result of mere guesses on the part of the teacher. Enforcement of compulsory education and the admission of a child into a school on the written application by the parent furnishing particulars as to birth-date would tend to remove the difficulty.

16. It would not, if it is raised to 14 only; if it is raised to a higher limit, it may.

17. Personally I am not in favour of separation of offences. Prevention of an offence by fear of punishment, I consider a poor substitute. The ideal should be to make the woman capable of making the offence against her impossible. If it is considered desirable to separate the offences, I would suggest that the punishment for the husband should be half of what it would be in the case of other persons.

18. As to procedure of trials, I would not propose any difference between the two cases. Inclusion of women in the juries in the trial of these offences is recommended.

19. I have no suggestion to make. I consider the present safeguard is sufficient.

20. Fixing the minimum age of marriage—I consider to be more effective than fixing higher age of consent; but a statutory provision for the latter would evoke lesser public opposition than in the case of the former. If the public are asked to make a choice between the two statutory alternatives, they would prefer higher Age of Consent to the minimum age for marriage.

21. I would certainly prefer to rely on progress of social reform by means of education and social propaganda. That is less felt and more effective; but it is very—very slow. The machinery which exists at present for the accomplishment of this object is very inadequate and there is no immediate prospect of any considerable accession to its strength. For this reason, recourse to statutory provision is considered desirable.

3. If the cases that come before courts are any indication, I should say that the crimes of seduction and rape are not unknown. But for each case that comes before a court, scores of them go unrecorded and unpunished.

I do not consider that the amendment made in 1925 has effected any appreciable change.

In the city of Bombay, girls are imported from outside. Many of them are of very tender age. We have passed two local enactments, viz:—(1) the Bombay Prevention of Prostitution Act, 11 of 1923 and (2) the Bombay Children Act, 13 of 1924.

Sections 7 and 8 of the Prevention of Prostitution Act prohibit Importation and Detention respectively of Young girls (under 16 years of age) and women for purposes of prostitution.

The Bombay Children Act by its section 7 clauses (d) and (e) empowers a Police Officer to bring before a court any young person (below 16 years of age) who frequents company of any reputed prostitute or who is lodging or residing in a house used by prostitute for prostitution.

Section 11 prohibits a person from allowing a young person under his control from residing in or frequenting a brothel.

Section 12 provides for prevention of seduction of a girl under 16 years.

Section 13 punishes for exposing a young person to risk of seduction.

Bombay has thus made provision for such crimes for urban areas to which the said acts are made applicable. Though the legal provision exists the machinery for its enforcement is inadequate. If the provisions could be effectively enforced the Age of Consent outside marital state would be automatically advanced without amending Indian Penal Code. Offences of this nature will be suppressed more effectively because the duty of protecting young persons is cast upon persons who have control over them, and it is they who bring about the commission of such offences.

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**Written Statement, dated the 12th September 1928, of Mr. B. V. JADHAV, M.A., LL.B., J.P., M.L.C., Bombay.**

1. I do not think that there is any widespread dissatisfaction with the present law. But in the interest of society and of the future mothers and infants it is necessary to raise the age and I welcome the Bill as a step towards it.

2. Public opinion is shocked when a girl of immature age and intelligence as one under 16 is seduced and there is a cry for deterrent punishment.

4. I think such laws produce indirect effects. They generally lead to later marriages.

5. Girls attain puberty between the ages of 13 and 16. Girls in urban areas are prone to early puberty.

6. Cohabitation is common soon after puberty. No cases come to the Courts.

7. I do not think religion has anything to do with consummation of marriage. And if any one raises a conscientious objection and cites a text from a religious book the reply to him should be that the expiation is very easy and costs only a trifle and therefore his conscience in this respect can be set at rest without much trouble and therefore ought not come in the way of legislation.

9. I think consummation should take place before a girl completes sixteen years of her age.

10. This is a very difficult question to answer. It will depend upon the intelligence and education of the girl. In the case of her husband the girl has no choice. On such occasions even grown up women of 25 and 30 give consent without realising the consequences. In fact there is neither time nor inclination to weigh the consequences at the critical moment.

11. I do not think it would be proper for me to make up such disagreeable cases exposing family life.

12. Yes.

14. No.

15. Registration of birth is becoming more and more satisfactory and that supplies the necessary evidence when it is available.

19. No.

20. I think both are necessary. One reacts on the other.

21. Education and Social propaganda are necessary, but this does not do away with the necessity of legislation.

Written Statement, dated the 19th September 1928, of Mr. H. P. DASTUR, LL.B., Bar.-at-Law, Chief Presidency Magistrate and Revenue Judge, Bombay.

1. There is a growing feeling among all classes of Society that the present Age of Consent is not an adequate protection in certain cases.

2. I would extend the Age of Consent to 17 years instead of 14 in clause 5 and would omit the words "without her consent" as superfluous. The second clause is ample protection in all such cases whatever the age of the girl may be.

Likewise in the exception I would substitute "17" instead of the present age of "14".

3. The amendment of the Law has not succeeded in reducing crimes of rape outside the marital state, nor in the improper seduction of girls. Parties are reluctant in coming forward especially where the girl is a consenting party, and in absence of registration of birth certificates the proof of the age of the girl becomes very difficult.

4. No. As a rule parties are not willing to come forward and give evidence against the husband of a girl.

By extending the age to 17 ample protection would be given to married girls either by postponing the consummation of marriage or putting off marriages beyond 16.

5. The usual period of puberty in this part of the Presidency is 13 to 15 but it is not very unusual for menstruation to occur even at 10 and 11 years of age.

6. Cohabitation among the poorer class of people takes place soon after puberty but such cases are not now common.

7. In my opinion this is due to Social Custom and Usage.

8. I don't know what this ceremony is.

9. No. In my opinion the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage.

The proper age when consummation may be had without any injury to a girl's health or her progeny ought to be 19 at the least. But as the people in this country are not sufficiently educated in such matters it is not wise to amend the law and extend the Age of Consent beyond 17.

10. I should think 17.

11. No.

12—13. Yes.

14. No.

15. Considerable difficulty is experienced in determining the age of girls. I would suggest a rigorous enforcement of registration of births in all parts of India. In cases where a birth certificate is not forthcoming there should be an X-Ray examination of the girl particularly as regards the Ossification.

16. The same difficulty would occur unless measures suggested in Reply to question 15 be adopted to determine the age of the girl.

17. Yes. I would make marital offences punishable with 2 years or fine or both.

18. I would retain the punishment and procedure in all cases of extra-marital offence, and make marital offences triable by ordinary courts of Law.

19. No.

20. Legislation fixing the minimum age of marriage would be more effective than penal legislation fixing a higher Age of Consent. Such legislation would be welcomed by the Public in this part of the Presidency.

21. Reform and Education.

**Written Statement, dated the 19th September 1928, of Rao Saheb  
MAGANLAL DALPATRAM KHAKHAR, J.P., Bombay.**

1. There does not seem to be any dissatisfaction with the state of the law as at present. As regards the unmarried girls majority of the Hindus would desire that the Age of Consent should be raised.

2. Early marriages and early consummation of marriage are not desirable, as owing to such marriages the constitutions of the parents become rickety, weak and unable to beget healthy children. A poor family has to maintain its livelihood by working hard to meet both ends besides performing the household work. Thus it is very difficult to pull on, hence the poor girl has to lead an immoral life.

It is therefore desirable that the limit of age be raised in case of unmarried girls to 15 years.

3. Now-a-days crimes of rapes are repeated to a greater extent than in the past as one could see from several cases brought before the courts, and improper seduction of girls against their will, have also increased extensively without any fear of penalty.

In order to make the Law more effective and to prevent the girls from leading immoral lives, education of self-restraint to my mind, is the only remedy. Their guardians be asked to keep them in good company and not to give them much liberty which is the root of all evils, as the Shastras say.

**पिता रक्षति कौमारे, भर्ता रक्षति यौवने ।**

**पुत्रो रक्षति वृद्धत्वे, न स्त्री स्वातन्त्र्यमर्हति ॥**

*Meaning.*—When in the state of a girl she is taken care of by her father, in youth she is under the protection of her husband, and when old she is protected by her sons. In fact a woman is not fit for liberty at all.

4. The Law as amended raising the Age of Consent within marital state to 13 years has not been so effective. The educated class of Hindus generally do not prefer early marriages at all. Now-a-days some allow their girls to grow up to the age of 20 or more. In lower classes of Hindus marriages of girls at the age of 10 to 12 are very frequent and cohabitation generally takes place also earlier. The priests, heads, and leading members of each caste and section should prevail upon the members of their communities by preaching and thus educating their minds so as to prevent early cohabitation. Certain caste restrictions may also be laid down.

A husband intends not so much to injure his wife as to satisfy his lust and in most cases the injury is so light that it escapes publicity, but one who rapes a female with reckless violence has no regard to her injury. He has the sole intention of hastily satisfying his demoniac lust and thus escaping scot-free without any fear of sentence, because he has no other concern or interest with the girl.

A simple sight of a lovely girl or a celestial nymph was quite sufficient to overthrow into lust the minds of high Saints and sages in remote ages. It would therefore be well in the interests of girls to be properly protected.

5. On this part of India in my opinion girls reach puberty from 13 to 15. This depends much more upon the life the girls lead whether luxurious or simple. A girl living in a village where she cannot get rich dainties, but simple ordinary food to eat, with exercise in open air and light is more

healthy than a city girl who has many enticing environments of luxuries, e.g., visiting cinemas and dramas, etc., which the poor village girl could hardly enjoy. Hence she is more healthy and reaches puberty not at 13 but even after 16.

In Shastras it is ordained—

अष्टवर्षाद्भवेत्तौरी. नव वर्षा तु रोहिणी ।

दशवर्षात्भवेत्कन्या, द्वादशे वृषली भवेत् ॥

Meaning thereby that at the 8th year she becomes a girl, at the 9th *Rohini* and at the 12th she gets menses, when she should be married and it is further ordained षड्वदमथेनोदःहया i.e., she should not be married within six years of her age at all. The Shastras further say—

माताचैव पिताचैव, ज्येष्ठो भ्राता तथैव च ।

त्रयस्ते नरकं यान्ति, दृष्ट्वा कन्यां रजस्वलाम् ॥

i.e., Parents or brothers of the girl who do not give her in marriage before menstruation go to hell and he who marries his girl after she gets menses is not worthy of यज्ञदान giving charity pursuant to the performance of *yajna* as will be seen from the following verse—

असंस्तुता तातगृहे रजस्वला

भवेद्वधूश्च दृषलीमता तुसा ।

मातापिताज्येष्ठसहोदराश्च

व्रजन्ति घोरं नरकं त्रयोऽपि ते ॥

6. (1) Cohabitation is not so common on this part of the country amongst higher class of Hindus as with the lower.

(2) It is common after puberty.

(3) Not before but generally after.

Such cases never come to court.

7. Hindu religion does not prescribe any penalty on early consummation of marriage which may be attributed greatly to the custom that has been followed from time immemorial as a religious sentiment.

8. "Gaona" or "Garbhadhan" Ceremony is usually performed amongst the Dakshinies on the first menstruation of a girl. Amongst the Gujaratis "Simant" Ceremony is performed when she attains the 7th month after pregnancy.

The "Gaona" or "Garbhadhan" ceremony is generally anterior to the consummation of marriage and it is generally performed after the attainment of puberty.

9. Attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. The more a girl lives in company where sensational topics are held she gets puberty earlier, and injures the health of her progeny though she may not be healthy like a village girl who naturally reaches the age of puberty very late and still she is not fit for such consummation, she having no such society or company.

A girl may fairly be considered to justify consummation at least two years after she reaches puberty.

10. If the society in which she is brought up is not so good she would give consent at the age of 13 without any regard to consequences, while a



girl living in good society would not give her consent before the age of 15 with due realization of consequences.

11. Many girls owing to their bodies having not been developed at the age of 12 and 13, suffer much in health by cohabitation and give birth to feeble children who are short-lived or if they at all live they always remain sickly and there is no vitality in their lives and they are unable to do greater deeds. After giving birth to such children the mother's health is shattered and is liable to attacks of diseases, *e.g.*, hysteric fits, consumption, epilepsy and various other diseases. In this condition the mother is not in a position to give proper nourishment to her children and eventually she dies leaving behind her children unprovided for. Sometimes if the girl is not developed her constitution is totally shattered owing to excessive cohabitation and she walks like a lame person. In this state if she again becomes pregnant she is sure to die at the time of delivery owing to excessive feebleness of mind and body.

12. Besides early consummation and early maternity there are other causes also which lead to high maternal and infantile mortality. Those who cannot afford and are obliged to live in small congested black holes having no proper air and light to inhale oxygen, and having no proper means of getting good nourishment by way of milk, food, etc., having no proper medical help also lead a very miserable life. These circumstances vitally affect the intellectual and physical progress of the people.

13. Public opinion is greatly developed in favour of an extension of the Age of Consent in marital and extra-marital cases. Refined educated classes are much in favour of it.

14. It is not necessary that women like early consummation of marriage for their children but more as a religious sentiment.

15. In my opinion to remove difficulties in determining the age of a girl in connection with offences under sections 375 and 376 of Indian Penal Code it is always desirable to refer to her horoscope which would speak for itself. But many do not keep horoscopes at all. In that case it would be better to register the birth. Generally school-going girls register the date of their births in the school records.

16. Yes, it would to a certain extent help the object.

17. It is not necessary to separate extra-marital and marital offences.

18. A trial in camera would be more preferable in extra-marital and marital offences as it would elicit the exact truth from the girl who owing to modesty would otherwise refrain from giving free vent to the facts of the case.

19. To safeguard against improper prosecution girls themselves or their parents or guardians would be the proper persons to lodge complaints in Court.

20. Penal legislation fixing a higher Age of Consent for marital cases would be more in consonance with the public opinion though it may not at the same time be more effective as fixing the minimum age.

21. To secure the object in view I would prefer to rely on the social reform by means of education and social propaganda rather than on the strengthening of the penal law.

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Written Statement, dated the 24th September 1928, of Sir TEMULJI B. NARIMAN, Kt, President of the Society for the Protection of Children in Western India.

With reference to your letter No. 42 A. C. C., dated 26th July 1928, I have the honour by desire of the Executive Committee of the Society to state that there is considerable dissatisfaction with the state of the existing law as to the Age of Consent and there is a general feeling that the age limit should be increased.

The Committee are strongly of opinion that the Age of Consent should be not less than 16 in marital case and not less than 18 in extra-marital cases.

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**Written Statement, dated the 25th September 1928, of Mr. NAYAN H. PANDIA, Honorary Secretary, Bombay Incorporated Law Society, 110, Medows Street, Fort, Bombay.**

I duly received your letter to me of the 31st July 1928 together with the questionnaire sent therewith.

I regret the delay in replying to your letter owing to unavoidable circumstances.

As regards the questionnaire, my Committee has not considered it necessary to reply to it in detail. I am however to state that my Committee is agreed that in the case of extra-marital relations the Age of Consent should be 16 years at the least. In the case of marital relations my Committee is of opinion that 14 years should be the minimum.

If it is desired to take oral evidence, my Committee has appointed me and in my absence Mr. M. B. Mehta, a member of my Committee, to give evidence before you.

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**Written Statement, dated the 24th September 1928, of Mr. M. S. PANDIT, M.A. (Oxon.), Presidency Magistrate, Third Court, Bombay.**

1. There is dissatisfaction as to the Age of Consent as it at present exists under Sections 375 and 376, Indian Penal Code.

2. In my opinion the present Age of Consent should be raised by two years for the following reasons:

The existing provision of 14 years as the Age of Consent in the Indian Penal Code must have been fixed having regard to the Social Custom of a vast majority of Indian girls who used to get married between 10 and 12 and the prevalent belief that the average Age of Puberty in a tropical country like India is 13 or 14. I think in fixing the Age of Consent at 14 it was rather assumed that a girl in India at the age of 14 attains such development as would enable her to give full and free consent to marital cohabitation. Public opinion has come to recognize that as a matter of fact the capacity to fathom the full consequence to cohabitation is not developed in girls at the time of attainment of puberty but only comes into existence two or three years after puberty. It is therefore both desirable and essential that the Age of Consent should be raised to 16.

3. I have no statistics before me to enable me to answer the question in any satisfactory manner.

4. I would suggest Penal Legislation prohibiting marriages of girls below the age of 14 and rigorous application of the provision of the Section of Indian Penal Code, whenever they are infringed.

5. I have no means to answer this question.

6. Among lower classes cohabitation is common, in some cases also before puberty. Some of these cases do come to Court.

7. I think there is a belief in the minds of illiterate people that religion enjoins that girls should be married before they attain puberty. At the same time it may be confidently asserted that there is no religious injunction regarding this.

8. No.

9. No, not for two or three years after attainment of puberty.

10. Not before 16.
11. I should say that one comes across numerous cases of injury to progeny but instances are difficult to give.
12. Certainly. Early consummation and early maturity have played havoc with infant mortality. Every decade shows marked deterioration in the physique of infants.
13. There has been a marked development of public opinion not only in Bombay but the Presidency in general as the special conditions prevailing at present have made early marriages more and more scarce. Public opinion also, supports the raising of the Age of Consent as it appears from the various public meetings that are held.
14. No.
15. I have no information.
16. I do not think so.
17. For extra-marital offences I would retain the present punishment. For marital offences I would fix the maximum punishment at 2 years or fine or both.
18. For extra-marital offences I suggest trial by Sessions Court. For offences within the marital state by a Presidency Magistrate or Magistrate of 1st Class.
19. Not necessary.
20. Yes.
21. I would sooner have the strengthening of the Penal Law. We may have to wait a long time if we await the action to follow public opinion as a result of progress of Social Reform.

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### Written Statement of Mrs. PADMAVATI R. SARAIYA, Bombay.

As I do not feel competent to answer all the questions, I submit a short statement of my views on this subject. My views are all based on general observations of a large number of girl friends at school and also of middle-class Hindus, and particularly on the fact that I was responsible for the bringing up to woman-hood two sisters-in-law.

I understand that in law a girl is said to attain majority at the age of 18. She cannot own, administer or dispose of property before that age. In Bombay she is not considered eligible to obtain a motor-driving license before then. It is therefore an anachronism that she should be considered competent in the most important matter of consent, long before she has attained years of discretion in any other matter. For extra-marital relations, therefore, I very strongly feel that no excuse whatever exists for the lower Age of Consent than 18 at least.

Regarding the Age of Consent for marriage, the evil effects of early marriage and early consummation, say at the ages of 13 or 14 are very patent, especially amongst the inhabitants of a city like Bombay. Majority of girls who are married early become physical wrecks after two or three child-births, i.e., by the time they are about 25, at the latest, they become an easy prey to diseases such as consumption, sprue, hysteria, or at least anæmia. One has only to go to a street like Bhuleshwar, and see the pale faces and lean bodies of Hindu women on the way, or take a census of the average weight and health of a typical section of middle-class society.

It would also be fairly obvious to a competent body of observers that these young mothers are not able to get the nourishment, open air, or exercise, which the constant strain of child-bearing necessitates. For example the young father is either facing unemployment or bravely struggling for existence on a monthly income of say, Rs. 100, if he is fortunate. He has to support a wife and two or more children on an average, to say nothing

of aged parents, and not infrequently of old relations. The young wife is supposed to cater for all, and if she falls ill or is very weak after childbirth, the doctor will coolly prescribe plenty of milk, lemon-juice, exercise, open air and change of scenery. How on earth is the income averaging round about Rs. 100 per month to be stretched to cover all these expenses, howsoever necessary and urgent they may be? I strongly feel that if the age of consummation and the age of marriage are delayed the girl would have time to build up her body and the men would have a chance to build up an income. In any case the economic problem referred to above would to a large extent be mitigated.

I am aware of the orthodox opposing any attempts at raising the Age of Consent within marriage, but I feel that with the changing times, with the changing economic and social structure of society, Government will have to choose between custom and religious practices, which may have been correct a few generations back, and the hard realities and necessities of to-day. I would only remind the Committee of the far-reaching changes as regards the position of women in Turkey and very recently in Afghanistan. In view of these observations and necessities, I feel that the correct age of consummation is 18, but as a first step in order to reconcile orthodox opinion as a legal measure the Age of Consent should be raised to 16 for married girls and 18 for extra-marital relations.

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**Written Statement, dated the 29th October 1928, of Raja NARAYAN-LAL BANSILAL, 205, 207 and 209, Kalbadevi Road, Bombay.**

1. Amongst educated people there is a general feeling of dissatisfaction that the Age of Consent should still be so low.

2. It is only proper that the Age of Consent should be raised to 18 against strangers and 16 against husbands. When girls are not allowed to enter into any contract before attaining majority, it seems cruel to allow them to be robbed of their virginity at a much earlier age. They deserve protection at the hands of the legislature.

3. The amendment of the Law of 1925 has failed in protecting girls, mostly accuseds are let off on the grounds that the age of the girls cannot be fixed with certainty. If the age is fixed at 18 it will be easier to determine the age and thus girls will get protection.

4. The amendment of 1925 has had no effect in protecting married girls. The community does not seem to know of the amendment. It has been treated as a dead letter. Now that the question has been before the public educated people see the importance of the question and it is hoped hereafter they will help in enforcing the Law.

5. The girls attain puberty between 12 and 14. Much depends on environments. Amongst rich, uneducated people girls seem to attain puberty earlier than amongst educated families.

6. In many cases girls are sent to their husbands after the marriage even before puberty without any consideration whether the girl is 13 or less. These cases never come to the Court.

7. There is no religious injunction of early consummation. It is entirely due to the ignorance of the people.

8. Gowna ceremony is performed only in some families. In others marriage and Gowna ceremonies are performed together. As stated above the question of attainment of puberty is not considered at all.

9. Generally it is considered that the attainment of puberty is a sufficient indication of maturity to justify consummation of marriage. This is a mistake. At least three years should be allowed to the girls from the time of puberty before consummation of marriage.

10. No girl is competent enough to give an intelligent consent to cohabitation with a due realization of consequences before she is 18.

11. Early consummation and early maternity are responsible for the large number of deaths amongst girls and is affecting the intellectual and physical progress of the people.

12. Early consummation and early maternity are responsible for the poor physique of the people. So many girls meet with premature deaths owing to the strain which ruins them and their progeny.

13. Amongst educated and intellectual people there is a general feeling that the Age of Consent should be raised in both cases.

14. Older women still favour early consummation of marriage but women of 30 and below realizing the serious consequences would strongly condemn early consummation.

15. Many a case has been defeated owing to the difficulty of determining the exact age under Sections 365 and 367. If the age is raised to 18 the difficulty will be reduced. Greater effort should be made to get births registered.

16. Yes. It will be much reduced if the age is raised to 18. It will also be reduced if the age is raised to 14 and above.

17. The offences should be treated separately. In marital cases for the first three years only fines should be inflicted. After three years of the passing of the Law imprisonment simple or rigorous may be awarded according to the nature of the case.

18. I would suggest cases of husbands to be tried in the first place in camera for the first three years.

19. No special safeguard seems to be necessary.

20. I would consider penal legislation fixing a higher Age of Consent for marital cases will be more effective than fixing the minimum age of marriage. Amongst the educated people penal legislation fixing a higher age will be preferred.

21. I would rely on the strengthening of the penal Law and also on the progress of the social reform by means of education and social propaganda. Both are necessary.

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**Written Statement, dated the 2nd November 1928, of Mr. GOVIND-LAL SHIVLAL MOTILAL, Poona.**

1. There has been dissatisfaction from the existing state of law of the Age of Consent, among the thinking sections of the people, who consider an advance of the law and its greater enforcement necessary in the interest of the society.

2. The time has now arrived when the Age of Consent should be raised both in the case of a husband and a stranger. Generally before the age of 16 years a girl is not physically fit for cohabitation and married life before this age puts her to severe strain to the detriment of her physical and mental development.

I recognise that minimum age of 16 for commencing married life for a girl would be an ideal thing but it will not be an ideal arrangement to fix this age by law and to make consummation before that age a criminal offence, as such a measure must remain in the present state of society a dead letter. As early marriages and early consummation are wide-spread in this country it is only by gradual progress that the evil can be remedied and every effort should be made to improve this condition; and endeavours of the Social Reformers in this respect should be supported by the legislation. The opinion and acts of the legislature are looked upon with an amount of respect and would as such produce a healthy change in the ideas and opinions of the people. I think consummation of marriage should not take place before a

girl has reached the age of 16, but at present to fix the age at 14 and make it effective would be more beneficial than to fix it at 16 and refrain from enforcing it.

3. I do not think that crimes of seduction or of rape in its ordinary sense are frequent in this part of the country but rape in the sense of cohabitation by husbands with their wives below the Age of Consent appears to me to be frequent and the amendment made in 1925 of the law has not succeeded in preventing such cases in this part of the country as the law has remained practically inoperative owing to the practical difficulties of its enforcement. I do not think that even outside marital state the law of 1925 succeeded in preventing cases of rape, as it has not been seriously applied. The working of the Child Protection Act in the town of Bombay has, it seems, produced some salutary effect.

4. The crux of the question is how to make the law effective as it stands or as it will stand when an advance is made. For cases falling within marital state the sure remedy is to interdict marriage of girls before 14. Another indirect way is to prohibit marriage of boys by legislation before they reach say, 21 years of age. But this remedy is not quite so sure as the first one; yet of all the indirect methods it is the one most potent to remove the evil of child marriage and early consummation; and its advantage is that it cannot be opposed on the ground that any religious injunction requires marriage of a boy to be performed at an early age. On the other hand it can be definitely said that it is meritorious according to shastras for a boy to observe continence or, Brahmacharya until he attains an age of full manhood which is about 24 years of age; and if such legislation is adopted it will go a long way in raising the Age of Consent and the age at which the girls will be married and child marriages will in course of time become rare if not unknown.

5. Age of attaining puberty is between 13 and 14 and it differs according to the mode of life of the girl to whatever caste, community or class she belongs.

6. Cohabitation, (1) before puberty, (2) soon after puberty and (3) before the girl attains 13 years of age is different among different communities and classes of people. Among people of Southern India generally cohabitation does not take place before puberty, on attainment of which some ceremony such as Ritu, Goda or Kalasha is performed and cohabitation immediately follows. But among the people of the North there is no such rule and cohabitation may and does usually take place soon after marriage without waiting for menstruation.

7. The practice of early consummation of marriage before or at puberty is due much more to the force of customs and habits than to the sense of observance of any religious injunctions.

8. There are diverse customs and usages in this part of the country among different castes and communities. There are sections of communities among whom Gaona or Garbhadan ceremonies are not performed while they are performed among other sections. In the South, the Garbhadan ceremony is anterior to the consummation of marriage but in the North, the Gaona is not necessarily anterior to consummation of marriage, but it is performed as part of the customary ceremonial and the child-wife occasionally goes to her husband's house and lives with him for short periods before that ceremony. Among the people of the North Chaturthi Karma is performed at the marriage time which pre-supposes attainment of puberty and passing of some periods of menstruation by the girl.

9. I do not consider attainment of puberty sufficient indication of physical maturity for consummation of marriage. I should say generally 3 or 4 years after puberty when a girl has attained the age of 16, she may reach physical development when consummation may take place without being injurious to her health or the strength of her progeny.

10. In reply to this question I should say 16 to 18 years of age.

11. I know of cases when due to cohabitation before full physical development, the health of girl has been prejudicially affected. Girls whose marriages were consummated before the age of 14 have been suffering from general debility, stunted growth and premature old age. Life-long disease in one case and death in another occurred among them by reason of early maternity. It may be observed that in these cases the girls belonged to well-to-do and healthy families and were well provided with and medical opinion ascribed their ailments to very early marriage.

12. Children born of young parents are weaklings and not sufficiently healthy. Intellectual and physical progress of the people is affected by child marriage and its early consummation.

I may be permitted to mention the case of certain boys which came to my notice. Some bright boys were studying in a school and it was found that they could not keep up their progress after a time which synchronised with their entering upon married life. I have not had opportunities of similar observation in the case of girls but same must be the case with them.

13. Since 1925, there has been steady development of public opinion and the Social Reform Movement has grown stronger among various communities and there is a greater intelligent public opinion to-day in favour of raising marriageable age both of boys and girls with a view to raise the age of consummation and such opinion is general and not confined to particular classes only.

14. Some custom-ridden women favour early consummation of marriage of their children. This applies particularly to women of the older generation but women of the younger generation are different and do not favour it and there is a distinct feeling among them, and others who have felt the influence of the Social Reform Movement, to look with disfavour upon early marriage and consummation.

15. There will not be much difficulty in determining the age of a girl where the law of registration of birth is in operation; but it will be very difficult where it does not exist or where its operation is lax as is the case in most Indian States, and raising the Age of Consent to 14 would somewhat facilitate determination of the age. Where age cannot be definitely established by evidence discretionary powers may be given to Courts to determine the age based upon a physical standard.

16. If the Age of Consent is raised to 14 years it will somewhat reduce the margin of error in determining a girl's age.

20—21. I think that if persons responsible for marriage of children below a certain minimum age are made liable to punishment it will be more effective in preventing consummation than fixing higher Age of Consent for marital cases and this course would be in accord with public opinion, among various sections of community. I have seen it said that fixing a higher Age of Consent will be less opposed than the marriage age. The fact however is that one who is opposed to fixing marriage age by legislation is opposed to raising the Age of Consent, but he may feel that while he can easily escape punishment in the second instance, he could not do it in the first.

A serious duty lies upon the State—Government and the legislature to eradicate child marriages from this country which is a national crime, and it will not be discharging that duty by resting content to leave the achievement of this object solely to the efforts of the Social Reformers. Education and social propaganda are persuasive measures while law carries with it the element of compulsion and either of these means which would accomplish the purpose more rapidly and effectually should be employed. If initial opposition is weathered and some law adopted and put in effect progress would be more rapid. There will be great opposition to the law in the beginning which will diminish at each succeeding stage and after a few years it would come to be liked and accepted not only as a necessary but welcome piece of protective legislation.

A strong Government can certainly stand initial opposition such as there may be, and can rely upon the educated and thinking people to support the

legislation and to commend it to the people for their acceptance and to popularise it.

Social propaganda has also to meet with opposition. Since its force is purely persuasive and there is no compulsion in it, it must be a slow process and not so sure as law could be. Besides it has to be recognised that social propaganda cannot succeed without education beyond a limit, and that the progress of education in this country is extremely slow and may not be speeded up very substantially for some time to come, to depend upon it solely for results in this or the next generation. But if law is introduced to forbid infant marriages and it is applied in a sufficient degree, results can be expected to be reaped in a decade or two. At the end I would lay great stress upon fixing higher marriage age for boys which cannot be opposed on the pretext of religious injunction and will materially help in abolishing child marriage.

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**Written Statement, dated the 31st December 1928, of Mr. DEVIDAS MADHOWJI THAKERSEY, J.P., Chairman, Halai Bhatia Community, Bombay.**

In my opinion, the law should be retained as it is in the case of marital life for the following reasons:—

Because in married life there have been very rare cases of rape known in our part of the country. In cases of outside the marital state, there should be no fixing of Age of Consent. When a law fixes an age allowing sexual intercourse, between a man and a girl who are not married, it gives consent for immoral purposes after that age. Amongst Indians sexual intercourse between an unmarried man and girl or a woman, is considered most immoral and from Indian point of view if by a law on this point an age is fixed for that purpose it means indirect encouragement to immorality after certain ages are reached by males and females. No Government should give such an encouragement to immorality, but on the contrary, much stronger laws should be enforced for stopping the same.

Until a girl has attained puberty cohabitation with husband is not known in our part of the country within the marital state and the present law should be considered quite enough.

In considering the question of propriety of age for sexual intercourse, the question of health of boys and girls is not less important than the question of age itself. Intercourse is strictly prohibited by the Hindu shastras before a girl attains puberty, which is generally in India between the age of 12 and 14. When this puberty is attained, it indicates bodily development and creation of desire for sexual intercourse. If the girl's organs have not sufficiently developed at the puberty owing to any bodily weakness, Dharma shastras prohibit sexual intercourse in such cases and a margin of a year or more upto four years is given to lead virgin life. If a healthy girl after attaining puberty, is not allowed intercourse with her husband, it is likely that owing to the natural desire created in her and if other surroundings are not very protective she is likely to go astray and fall herself victim in the hands of others, leading to an immoral life, which is so strictly prohibited by the Hindu shastras.

Again, if healthy girls after attaining their puberty are refrained from sexual intercourse for more than a year and if a boy after 24 is also refrained from that intercourse by a married life and are forced to live as virgin and bachelor for several years, they are apt to fall victim to such diseases, as would make them incurable for a married and sacred life. It must not be overlooked the climatic condition of countries are more or less instrumental in the development of bodily organs and the sexual desires and it is under these circumstances that the age of 12 is considered apt for marriages and 13 for consummation of same for quite a healthy girl in India.



It is owing to the above reasons that I have recommended in my above statement to allow the Act to stand as it is in marital life. But if any alteration in this Act is recommended, it will lead to very serious trouble owing to frivolous complaint being lodged by an enemy or some people to serve their malicious objects and create unpleasantness in the happy Hindu homes, which in great majority follow their shastras. However, looking to all circumstances which surround these questions, I would suggest an age of 14 for consummation of marriages if it is strictly provided in the Act as suggested by Sir Purshotamdas Thakurdas in his evidence that a complaint in the matter should not be admissible from outsiders, but only from parents.

It is said by one previous witness Mr. Bole that in Bhatia Community "giving birth to a child by a girl of 12 is a common thing and both mother and child succumb to this custom". I challenge this statement and I say that the statement is a malicious and deliberate lie. Generally at or about the age of 12, only marriages are celebrated and sexual intercourse is allowed by parents some good time after the girl attains puberty. The alleged deaths of children and crippled state of young girls and boys is due to want of good milk their chief food and the unhealthy surroundings in which they live in the native parts of the towns. Under the plea of nuisance, the Bombay Municipality have almost hauled out private stables for cows and buffaloes from the city and thus made children and young people to live on adulterated milk, brought into the town by railway trains from long distances in insanitary conditions.

Also the cause of the crippled and unhealthy state of young girls and boys is due to the most insanitary condition of gutters which create poisonous air by accumulation of most dirty water mixed with night soil and other household refuses from kitchen, which are allowed to remain there between different houses for days together.

Very little attention is paid by the Bombay Municipality to such matters as above relating to health. The Corporation by a recent resolution passed by the body regarding common drinking pots, will also be responsible to create more causes of unhealthiness amongst the younger generation.

The ages of sixteen and eighteen are also advocated by some for celebration and consummation of marriages respectively, which will be objectionable for healthy girls from the point of view of my community as well as many other communities of the Hindu population in the city of Bombay, who follow their religious mandates, which are combined with and based upon medical and scientific principles. I think more serious attention is required to be paid to a very evil custom prevailing in a class, which Mr. Bole represents, whereby instead of marrying girls at due ages, girls are wrongly dedicated in the name of God and are subsequently allowed to live an unmarried immoral life till they live. Greater part of the prostitutes in the city of Bombay as well as in the Central and Southern parts of India, belong to the similar class of people as above and I suggest that in order to remove this great evil from the country, very strict laws with heavy punishment of imprisonment should be passed for those, who live such unmarried and immoral life after they have attained proper ages.

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**Written Statement, dated the 27th October 1928, of Mr. ARDESHIR R. SUBEDAR, Dubash and Contractor, Bombay.**

Since last week I am reading in daily papers views of citizens on the social subject of married life and being a married man, I take this opportunity of expressing my views on this knotty problem of sex, age and time limit of marriage for the youth.

At the outset, let me point out to the worthy Chairman and members of the Age of Consent Committee that the most powerful and efficacious of all lovers for the social, moral and spiritual elevation of mankind is the Word of God. Into whatever quarters of the habitable globe, a Christian

finds sacred volumes of his religion diffused freely even among other communities for the amelioration of mankind, as such there is corresponding spread of civilization and a sensible improvement in the scale of humanity and those countries are most socially and morally debased in which religious scriptures and good books pertaining to their own religion and custom are debarred or restricted. It is with regret the writer has to state that Indians being deprived of primary education even, with the result that the dissipation and final ruin of many boys and girls arise from no other cause than this illiteracy. Due to illiteracy, being deprived of good thought, good words and good deeds, which are essential for the happiness of a person, because no sooner a lad or a girl attains the age of puberty than the first idea comes to them (both the lad and the girl having developed what are known as natural forces, I mean human passions) is to satisfy their so-called pleasures out of passion forces. Because, in pleasure, a person thinks that he or she is happy or finds happiness even the pleasure may be of a vicious sort. As such, I emphatically state that the passion pleasure can only be averted if one comes across good society and good books which is very rare as far as India with diverse communities and diverse religion are concerned, though all being of one God but not of one view, as by education a person can understand right from wrong and thereby detect virtue from vice. The humble writer asks the following query to the citizens who are on the Age of Consent Committee which is as under. How many Indians are literate to understand sex problems and age consent limit out of 33 million Indians? (2) If the reply that the majority are and will be illiterate as far as India is concerned, then I ask "Is it right for the minority committee to dictate terms by virtue of a law to the majority of population and that too on a knotty problem of marriage reminds me of the proverb that the Age of Consent Committee are putting the cart before the horse, though I do admit that the Worthly Committee Members who were appointed by the Government are thrashing out the problem in the future interest and well-being of Indian youth. Until and unless the Government feels their bounden duty to instil in the minds of illiterate parents advantages of primary education, such as reading of sacred books daily and other good books and all that is essential to the happiness of young minds, it will be difficult to break old rules and expect desired change in matrimonial age as expected by the Committee from lads and girls, under the age of 16. One example and I have done. Say, your Committee fixes the age of 18 for the lad and 16 for the girl as the proper age to marriage by law. Say, A has a son aged 16 in the previous class of a Bombay College, a top boy, due to his cleverness. In the college he finds fancy to a girl aged 16, friendship transforms into love affair, the girl taking a fancy for the boy. Charles Dickens Novels becomes the cause of further amatory with the result that the girl conceives to the lad of 16. Now according to the Consent Age Bill they cannot marry, and so the child that is to come hereafter within 10 months cannot call the author of its being, its father and that child is a curse of society because of its illegitimacy, that is actually thrust upon child by your so-called unnatural laws, "though the party willing to marry, but the barrier of law coming in the way", which nature never meant to be any day on the anvil inasmuch as by so doing the Government and we ourselves are at all intents and purposes going counter to the well laid out machinery by the infallible and all potent Lord Almighty. Believe me, Sirs and Madame, that it would be a great blunder on the part of all those who understand that the boy of 15 and a girl of 14 cannot conceive of an idea of a sexual pleasure as I am any day ready to prove to the hilt that the same passion which a grown up person feels is felt by the boy and the girl in proportion to their blood, no sooner both attend the age of puberty. By passing the bill, we would be going from bad to worse in resorting to unnatural and artificial matters which are too common in Paris. One line, and I have done, "Let East which is virtuous be East, and West which is more vicious be West". If your Committee thinks that I should enlighten them all on village life of boys and girls under 16 who carry on private intercourse, I am in a position to prove by instances.

**Written Statement, dated the 29th October 1928, of Mr. FATEH-MOHAMED YOUSUF, Khandwary Building, Bombay.**

Your letter, dated the 26th instant, Ref. No. 746-A. C. C., along with the questionnaire issued by the Age of Consent Committee, addressed to me at Fateh-Munzil, New Queen's Road, reached me on the 27th instant.

In reply to all the questions contained in the above form I beg to state the following :—

That though a girl attains the age of maturity at about 13, she is generally unfit for a successful marriage. Therefore the marriageable age of a girl should be at least 16 years. If a girl is married earlier the children brought forth will naturally be very weak and at the same time the life of the girl will be in danger, owing to early marriage. Similarly the age of marriage for a young man should be at least 21 years. If he is married before this age he is not likely to become a father of healthy children, besides becoming weak himself. Moreover, his marriage at an early age is interruption to studies, etc.

In all the cities and towns every class or caste has its own Jamat and a leader for it. So the above matters should be entrusted to the leaders of the respective classes for carrying out the rules laid down for them by the Age of Consent Committee, and that it should also be made known that every marriage should be performed with the permission of the leader of the respective class to which the marriage parties belong. By this arrangement, in my opinion, the present crimes could be reduced to a very great extent.

If in case the rules of marriage be violated, both the parties concerned, i.e., the father or guardian of the man and the father or guardian of the girl should be fined or sentenced to simple imprisonment.

**Written Statement, dated the 30th October 1928, of Mr. CHANDU-MAL NASORMAL, Honorary Secretary, Shri Shikarpur Shewak Samaj, 4th Floor, Laxmi Buildings, Nagdevi Cross Lane, Barbhoy Muhla, Bombay.**

With reference to your circular letter No. 42-A.C.C., dated the 26th instant and the questionnaire form attached to it, I, on behalf of my Samaj, am directed to express its views on your questions as following :—

1. No. There is no dissatisfaction with the state of law, as to the Age of Consent as contained in the Sections 375/376 of the Indian Penal Code.

2. My Samaj is not in the favour of retaining the law of Age of Consent as it is, and strongly advocate a material and rational advance on the present law.

3. Crimes of seduction or rape are not frequent. But my Samaj does not think the amendment of the law made in 1925, retaining the Age of Consent to 14 years, has in any way succeeded in preventing or reducing the crimes of seduction or rape outside the marital state. It is therefore advisable that the newspapers should take up the subject and give the matter as wide and as frequent publicity as possible.

4. The amendment of 1925, raising the Age of Consent within the marital state to 13 years, has not been effective. This Samaj opines that measures be taken in stimulating public opinion and that the societies should publish brochures on the subject, and distribute them freely among their constituents. The law as amended has not been able to educate or stimulate public opinion in the matter, as the existence of the law is known to very few outside the legal world. Besides this Samaj is of very strong opinion that the age of

marriage should be raised to 14 years and any marriage below fourteen years should be punishable under the Indian Penal Code.

5. The usual age of puberty in our part of country is 13 or 14 years of age, and it does not differ frequently. But it depends upon environments and habits.

6. The cohabitation before and soon after puberty, as well as the girls complete 13 years of age, is not uncommon. Rarely a case of the nature comes to Court. Most of such cases do not come to light for fear of disgrace before the public.

7. The practice of early consummation of marriage before or at puberty can be attributed to some wrongly believed religious injunctions, the authority of which is quite unreliable. The Shlok which is most popular in this respect, was written by certain Kashinath pandit of Kashmir, during the tyrannical reign of Mahomedans. It reads as following :—

अष्ट वर्षा भवेद् गौरी नव वर्षा च रोहिणी ।  
दश वर्षा च भवेत्कन्या तत उर्ध्वं रजस्वला ॥  
माताचैव पितातस्य ज्येष्ठोभ्राता तथैव च ।  
चयस्ते नरकं यान्ति दृष्ट्वाकन्यां रजस्वलाम् ॥

The meaning of it is that the girls should be got married in the early age of 8, 9 or 10 years, and later on if the girl attains puberty in her parents' house, her elderly relations shall go to hell. In contradiction to it, there can be quoted a hoast of authorities from many reliable shastra. For example one shlok from Manusmriti is quoted as following :—

त्रीणि वर्षाण्यु दोक्षेत कुमार्यृतुमती सती ।  
ऊर्ध्वं तु कालोदतस्य ब्रिन्देतसदृशं पतिम् ॥

मनुः अध्याय ८ श्लोक ७० ।

The meaning of the above shlok is " For three years after attainment of puberty, the girl should wait and search for a better suit. After that period if she cannot get a better husband she may marry to an equal one." Now in order to justify as to which one of the above two shloks should be considered more accurate, the following authorities will help much.

केवलं शास्त्र साञ्चित्य न कर्तव्यो हि निर्णयः ।  
युक्ति हीने विचारितु धर्महानिः प्रजायते । ३ बृहस्पति ।

It is not meet to decide only on the strength of the shastras : for without appropriate (pious) deliberations the religion is degraded.

युक्ति युक्तमुपादेयं वचनं बालकादपि ।  
अन्यं तृणमिति त्याज्य मप्युक्तं परमेष्ठिना । योग वामिष्ठ ।

An appropriate (witty) sentence from a child is more acceptable than the one coming from Brahma (the Creator) which should be treated worth a straw (if irrational).

From all this above, one can easily make out as to what is right and more reliable.

8. Garbhadan ceremony is usually performed in our part of country. It neither does coincide with nor it is anterior to the consummation of marriage. It is generally performed after the attainment of puberty according to individuals' opinion (specially that of the elderly women of the families).

9. The attainment of puberty is generally considered to be an indication of physical maturity, but yet the consummation of marriage, and for all practical purposes, marriage itself should take place at least two years after attainment of puberty. The marriageable age must be fixed at least 14 and 18 years for girls and boys, respectively.

10. It is understood that at 16 years of age the girl in India would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. Yes. There are several cases of cohabitation before puberty resulting in injury to health of both, the girl as well as her progeny. But no notes or details are available.

12. Early consummation of marriage and subsequent early progeny and maternity are mainly responsible for high maternal and infantile mortality, as well as for other results affecting the intellectual and physical progress of the people.

13. For want of propaganda and education there is no development of public opinion. It may be confined to certain individuals probably amongst the educated.

14. Yes. But it is generally because the majority of women at our side are uneducated. Hence they are easily misled by the foolish Brahmans, on the ground of wrong quotations, saying that the parents shall go to hell if they do not get their girls married before the attainment of puberty. But our shastras say that :—

उपदेशयो पदेणद्र त्वात तत्सिद्धि ।

इतरथांश्चपरम्परा, सांख्य अ ३ सू० ७८ ।

“ When there are good teachers as well as good hearers, the result come out very excellent. But when there is no goodness or excellence in them, the result comes out very bad.”

15. There have been very few offences under Sections 375 and 376 of Indian Penal Code known to people, and the best suggestion would be to have a severe law in the Indian Penal Code, relating to the registration of the births.

16. Yes. The difficulty will be minimised if the Age of Consent is raised to above 14 years, because then the medical men would be in a better position to tell the age of the girl more definitely.

17. Yes. Marital and extra-marital offences should be separate. The former offence should be punishable for the first time with warning and surety of good faith, and for the second time it should meet two years' simple imprisonment. For the extra-marital offences hard imprisonment from 7 to 10 years is recommended.

18. Yes. For the first time the trials in the marital cases should be tried in camera, and for the next times the same may be taken up in the open Courts. In the case of strangers there should always be open trials in the Law Courts.

19. The existing safeguards are sufficient.

20. The legislation restricting marriage to a particular age would be more effective and preferable than that fixing a high Age of Consent.

21. We prefer to rely on strengthening of the penal law to secure the object in view.

Written Statement, dated the 26th November 1928, of Mr. H. D. RAJAH, Honorary Secretary, The Khar Youth League, Khar.

1. Yes.

2. (1) Present law of the Age of Consent being quite unsatisfactory and the limit too low we do not favour the retaining of it.

2. There are various factors which necessitate the raising up of the Age of Consent. In respect of health and longevity of life it is highly essential. The girl should be allowed sufficient time to develop her body before she can enter into marital relations. The girl must be in a position to realise the implications of such relations. Also sufficient time must be allowed for the girl to prosecute her studies. Finally though a fairly large number of people recognise the evils of early marriages they are not in a position to withstand the regards of social customs and hence legislation is necessary.

3. Not frequent. The amendment of the law made in 1925 has not succeeded in preventing or reducing the cases of rape outside marital state, for the culprits care little whether the girl is fourteen or twelve and they continue their work in spite of this amendment. What is wanted is to devise plans by which such culprits can easily be booked. Most of the cases do not come before the Courts for fear of scandal and getting proper husbands for the girls. The improper seduction of girls for immoral purposes is still going on and will continue so long as the brothels exist and naturally the trade in the brothels flourishes as the occupants of the brothels are younger.

To prevent crimes of seduction or rape we would recommend a machinery similar to that of the vigilant association with powers to bring them before Court without causing any damage to the aggrieved party either publicly or privately. The amendment of the law is useful only to punish those who are brought before the Court for trial.

4. The public opinion being ahead of the age fixed by the amendment we are of the opinion that the effects stated have come out not on account of the amendment and in order to make it effective we would propose the limit should be raised.

5. The girls attain puberty between 13 and 15. It does not differ in different castes and communities but depends upon the climatic condition of a place.

6. Cohabitation is very rare among any class before puberty.

(2) It is very common soon after puberty.

(3) If the girl attains puberty before the girl completes 13 years and if she has been married cohabitation takes place. Hardly any case comes before Court even if the party is aggrieved for reasons mentioned at a previous occasion.

7. We do not think that there is any religious injunction behind this practice though certain sections of the public believe that the practice is justified by religious sanctions.

8. Garbhadan ceremony is performed after the attainment of puberty, in certain communities in Deccan and south India but not in Gujerat.

9. No; at least 2 years are necessary after her attainment of puberty to have intercourse.

10. 16 years of age.

11. No information.

12. Yes. The intellectual and physical progress of people is much affected by early maternity.

13. The considered opinion of educated classes and intelligent public is that the Age of Consent should be raised. As has been already indicated the amendment of the law in 1925 is not sufficient.

14. The women like to see their daughters become mothers as early as possible. This is so in certain classes and communities. But now they also realise the dangers of such acts.

15. We do not know. But if any difficulty is felt in determining the ages of girls the best guide is birth Register. Efficient system of keeping birth Register and making provision for identifying girls as elders, eldest or younger would help much in determining the age of girls.

16. We cannot say.

17. Yes. Marital offences should not be tried publicly; but a report of the case can be made available to the public without mentioning the names of the parties. Moreover if such cases are compoundable every facility must be afforded for them in doing so. In case of marital offences fines alone will be sufficient.

Extra-marital offences must be dealt with severely. Any punishment even corporal can be effected in such cases. If the aggrieved party requires protection it must be granted and if possible the evidence of the girl must be taken in camera in order to avoid scandal.

18. Answered in question 17.

19. If improper prosecution or extortion is effected and if the accused is proved to be innocent complainant must make proper compensations in such cases. It would be difficult at times when even real culprits would be let off for want of proper evidence.

20. The Age of Consent must be raised to higher limit than the marital age. Both require to be enacted into law. We favour the age of 14 as marriageable age and 16 as Age of Consent. Both will be in consonance with public opinion.

21. Law alone will not help to eradicate the evils of early marriage. Press propaganda, paid missionaries from the state and social propaganda would effect such progress. Law is only a means to bring the offenders to book. But to prevent the crimes of such cases it could be effected only by education, propaganda and lectures in towns and villages.

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### Written Statement of Dr. S. K. VAIDYĀ, Medical Research Laboratory, Bombay.

1. Educated opinion is *ready for an advance in the age of marriage*, which may be safely fixed at 14, without very great risk of opposition. As long as there is orthodoxy, so long there is bound to be some opposition. But, *penalties* for breach of this law, by imposition of *deterrent fines*, on the parents or guardians of both sides would soon create respect for law.

2. I am *strongly against the raising of Age of Consent within marriage*, which would permit marriage at a lower age while withholding consent to consummation to a later age, as it would be well nigh impossible to make the provisions for the breaches of the consent-part-of-the-law-within-marriage, effective; not only that, but it would be, at the same time, degrading for the young wife whom it seeks to protect, by the very nature of the investigations, both medical and other, which are bound to be searching and delicate, almost verging on the inhumane, for a mere child of tender age, whose mind has not even sufficiently grown to grasp the situation: And what is still worse, is that in the event of the husband being punished by imprisonment, or by flogging, or in any other way, the future life of the poor child-wife is as thoroughly and as certainly ruined as by a dynamite explosion. And what is the protection and what is the relief that the law can afford? *None whatever*. Such a climax of tragedy cannot be the intention of those who advocate the protection of the girls!

3. Permitting the marriage to take place at an early age, say even at twelve years, permitting the married couple to come in contact, and then expecting the girl-wife to withhold her consent, or *expecting the husband (boy or man) to resist the temptation to ask for consent* under these conditions, is like *expecting the fire to freeze*, or like deliberately inviting a potential burglar to enter a house, to provide him with a passport to so enter and remain there as long as he likes, to dazzlingly spread before him the valuable jewellery for his admiration and feasting to deliberately rouse his cupidity and also enjoining that if caught in the act of pilfering before the expiration of a given date, he is liable to be prosecuted and punished. Of course, he may indulge in half-way sex-improprieties, just as the burglar may handle the jewels, barring misappropriation, without any breach of propriety. This is simply muddle-headed, vexatiously-ineddlesome and positively harmful. My remedy is that age of marriage should be raised, at the moment at least to 14, and later if necessary, to fifteen or even sixteen, in the light of experience.

4. I am not in favour of flogging nor of imprisonment. In my view, deterrent fine would meet the case. Declaring marriages under 14, illegal. is another measure worth considering.

5. Punishment of parents who give their daughters in marriage below the age-provided, and of those who take such girls for wives for their sons or wards, is a thing which is *justifiable*, as the parties concerned are major and are expected to know their responsibilities, although the difficulties of the conditions cannot be cavalierly brushed aside, as long as society as a whole does not advance.

6. Punishment of the husband, for intra-marital offences, and the resulting inevitable punishment of the child-wife, both direct and indirect, later on, is like sacrificing the victim whom we wish to safeguard: and *amounts to visiting the sins* of the orthodox parents unto the immature, voiceless, absolutely dependent and maritally-passive child-wives. It would be again necessary to assess the culpability of the husband to divide them into two groups:— (1) Those under thirty and (2) those above thirty, the latter being more culpable.

7. Extra-marital consent age should be at least 16, and desirably 18. There cannot be any opposition from any quarter to such a provision, nor if any, could be justifiable.

8. Some pertinent observations.

Age of puberty in the cases I know of is about 12 and 13.

Age of puberty in American girls is 11—13 in 90 per cent.

Average school going girl in America coming from representative homes of reasonable wealth and considerable culture feels the sex-urge between 14 and 17 years of age in fully 90 per cent. of cases, indulges in kissing and hugging and button-shining-close-dancing, and in fully fifty per cent. of the original 90 per cent. indulge in half-way sex intimacies, that wreck the morals and health alike. (Judge Ben. B. Lindsey in *Revolt of Youth*.)

While reforming and advancing, we do not want these civilised proprieties and it is based on these various facts of the whole world as regards sex-knowledge and sex-intimacies possible without marriage. I would much rather fix the age of marriage at 14 and would fight against Age of Consent fixed at a higher level after marriage. If public opinion is ready the age of marriage may be fixed even at fifteen.

Because according to Judge Lindsey, fully 15 to 25 per cent. of high school going girls age 14—17, who begin with hugging and kissing, eventually go the limit, and at least 5 per cent. of these become pregnant, in spite of their more or less effective contraceptive methods-knowledge.

To protect the married child-wife after 14, I would certainly advocate diffusion of knowledge of contraceptive methods if they are likely to be thrown together before sixteen and would include a "Marie Stopes" or some such book in the marriage dowry, but would much rather prefer to keep the couple apart as far and as long as possible.



**Notes on a Visit to Institutions in Bombay City by the Age of Consent Committee.**

*Bombay, 28th October 1928.*

The Committee visited the Madanpura and Parel Chowls on Sunday, the 28th October 1928, and examined the conditions of living among the labouring classes at Bombay and the practices prevalent among them regarding marriage and maternity. The members also made enquiries from Mr. Saiyed Munawar Ali, one of the representatives of labour in the Bombay Legislative Council. The labourers go back very often both for marriage and maternity to their homes, and even where marriages take place early, consummation is generally postponed till the age of 14 or 15 years.

The members also visited the Wadia Maternity Hospital and the Childrens' Rescue Home. The women of the labouring classes were largely using the former for maternity purposes, and the cases of maternity before 16 were very rare. The Childrens' Rescue Home contained wandering boys and girls or children under 16 who had been offended against or were under trial. Among them there were girls who had been rescued from brothels or said to have been raped by persons under trial, but though some of them were married, it was somewhat difficult to ascertain from them their present ages and the ages at which they were married, or the reasons why they left their homes.

Both these institutions are doing very useful work.

## POONA.

**Written Statement, dated the 12th August 1928, of Mr. J. R. GHARPURE, B.A., LL.B. (Hons.), Principal, Law College, Poona.**

1. Yes, there is dissatisfaction as to the state of the Law as to the Age of Consent as contained in Sections 375 and 376, I. P. C., especially as to the age limit in an offence by a stranger.

2. A general change in the Social out-look has brought in its train a considerable change in the ideas about marriageable ages of girls; and although the orthodox opinion is against the letter and wording of the Bill brought by Mr. Sharda, there does not appear to be much difference regarding its principle. It is a remarkable fact that the opinion expressed by the intelligentia of women is uniformly in support of the Bill. These facts indicate that the people are not satisfied with the law as it is at present.

3. (a) I cannot say as to the frequency of these crimes. A reference to the annual reports issued by the Police for the Bombay Presidency (1925) and for the City of Bombay (1926) indicates that offences of rape committed by others than husbands are not a negligible quantity. The figure for the whole of India as given in the statistical abstract for 1916-17—1925-26 indicating the total of 1,910 of offences reported and 729 of convictions recorded, puts the Bombay figure (18) on a much lower proportion.

3. (b) & 4. Not being in possession of specific information, I cannot answer this question whether the amendment in the law in 1925 has effected prevention or a reduction in this crime I do not think any Legislation can claim a credit in this respect. I am not sure if the amendment in the Law as made in 1925 has permeated to all corners of this vast country and it is quite possible that a large number of people may be unaware of it.

5. The ordinary normal age at which a girl attains puberty is 15, a little before or after its completion. I know and remember cases where the age was 19, but that was more than half a century ago, when the literacy of women was a moot question and the vernacular literature was not so abundant as it has grown now and particularly very little sentimental literature existed which was likely to excite the passion of the reader. On the other hand not unfrequently one may come across a case where puberty has been reached just after 12.

The age of puberty thus would differ according to the difference in environments, social as well as moral and mental.

6. (a) I do not think it may be said that cohabitation is common before puberty, although strict vigilance or scrutiny may bring out a case here or a case there. But these must be very rare.

(b) Cohabitation *after* puberty is common.

(c) I remember a case which had come up to Bombay High Court where the evidence showed that there was cohabitation before 13 but after puberty.

7. Yes. It is generally and I should say more on account of religious injunction than any other causes that the practice of the early consummation of marriage before or at puberty exists.

The reference given in the appendix will indicate the foundation of this rule, the nature of the injunction as also the penalty for a breach thereof. The injunction can be traced for its origin—as far as the Vedas. See Taittiriya Samhita II-5-I “Vasishta Smriti” V 8 and other passage.

8. The Garbhadana ceremony is usually performed in this part of the country. It ordinarily coincides with the consummation of marriage, although

where cohabitation takes place before puberty, the ceremony follows consummation.

When performed the ceremony is generally performed within 16 days of the attainment of puberty.

9. I do not consider, speaking generally, that attainment of puberty is a sufficient indication of physical maturity. I would consider 16 as the minimum age for the physical development of a girl.

10. After 16.

11. Yes. A case referred to in the 6 (c), occurred in the Ahmedabad District, where as a result of cohabitation on the Garbhadana night, hæmorrhage occurred resulting in the death of the wife. The husband was given 2 years for doing a rash and negligent act. But those who knew the usage based on religious injunction did not feel quite convinced as to the correctness of the conclusion and the justice of the sentence.

12. Yes. I do consider early consummation and early maternity responsible for the high rate of mortality as also for the physical and intellectual deterioration of the people generally.

13. Yes. Public opinion was and has been rather strongly in favour of the extension of the Age of Consent in extra-marital cases—16 in the case of marital and 21 in extra-marital.

The opinion is general among women.

14. No. Even among the older generations although there was desire for an early marriage an early consummation was not favoured.

15. I cannot quite follow the question, and in particular its genesis.

If it is intended as a preliminary to the fastening of responsibility upon an offender in an extra-marital case I do not see the necessity of shifting this matter so minutely. The principle laid down in the case of *Regina versus Prince* may be applied so that a man who goes about doing a wrongful act will take the responsibility for all consequences and he will not be allowed to plead his personal ignorance or even misguidance by the girl herself; if the age is found to be as a matter of fact below the limit laid down in the law, he will bear the consequences.

In marital cases there is no difficulty. The husband generally knows the age of his wife.

16. Yes; it may to some extent be minimised, but (*vide* my answer to question 15) I do not see the necessity of all this inquiry in non-marital cases.

17. Yes. I would separate the two cases.

For, while in the case of marital offences I would fix the age limit to be 14 and the *punishment not exceeding one year*, in a non-marital case I would have the age limit extended to 21 and the punishment same as in the latter part of Section 376 (that is, transportation for 10 years, etc.).

18. Yes. Same as has been given in the present Code of Criminal Procedure.

19. If in a marital case the age limit be fixed at 14 I do not think there would be any frequency of the offence and no occasion for collusion would arise.

As regards improper prosecution and personation the safeguards would rather consist in the nature of the punishment meted out both Judicial and Departmental—more this latter than the former.

20. I consider that legislation fixing the minimum age of marriage would be a more proper and an effective remedy than the penal legislation. The alternative given above would be more in consonance with public opinion (*vide* Indian Social Reformer—for 21st April and 4th August 1928).

21. I would leave the penal law alone. In my opinion it would raise difficulties which would be unnecessary. It would only stiffen people towards a measure which by an appeal to their good sense and sentiment would be easily accepted by them.

I would therefore consider social progress by means of education and propaganda work as a more practical and effective way for securing the object in view, than any other course.

### Oral Evidence of Mr. J. R. GHARPURE, B.A., LL.B., Principal, Law College, Poona.

(Bombay, 24th October, 1928.)

*Chairman:* Are you the Principal of the Law College, Poona?

A. Yes.

Q. You have edited several sanskrit texts?

A. Yes.

Q. Could you tell us more important ones of these?

A. Manu Smriti Bhashya, Medhatithi and the commentaries with Pradakshina and the Mayukhas.

Q. How many texts have been published up to now?

A. Two translations and 16 in texts have been published.

Q. You have also been a member of the bar practising in the High Court of Bombay?

A. Yes, for 28 years. I have also written a book on Hindu Law.

Q. Could you tell us the text referred to in your appendix? What is the purport of these things? Kindly give it from the original with reference to context.

A. The purport of that text is that whenever a woman is anxious to have copulation she should not be refused. That is the sum and substance of the text. That is within marriage. It is perhaps better to give the context. A certain murder was committed by Indra. It was a murder of one who was not quite loyal to the cause of the gods. He approached some of the ladies and asked them to share with him that guilt so that he may be eased of the burden. In exchange they demanded a boon and the boon was this that whenever they desired cohabitation they should have it. Read with reference to the context it means that whenever a woman wants cohabitation she must have it.

Q. But you interpreted the text to me that the act of cohabitation depends on volition of the woman.

A. I said that because it is argued sometimes that consent or no consent a husband must have cohabitation.

Q. Is it an injunction to the husband to have consummation whenever the age of puberty is reached?

A. I do not accept that. That cannot be the position from the origin of this text. There are other texts which no doubt say—for example the text bearing on the law of marriage—that certain hells are prescribed for a father or mother or relation who is the guardian of the girl if he likes her to remain unmarried after the age of puberty. Moreover it is argued that there is an injunction on the part of the husband also to consummate the marriage whether the woman wants it or not. Speaking personally I think that could not be the deduction from the text. Inability of both the husband and wife is exempted. I think it must be due to the multifarious occupations of the husband elsewhere and that the injunction is given in favour of the women as probably he may not be inclined to give the pleasure.

Q. Is the injunction the husband's duty?

A. If he is unwilling, he commits a sin.

Q. If you have the age of marriage would you have it at 14?

A. Yes, for the reason that the general age of puberty borders somewhere about 15, therefore the marriage should be at 16.

Q. But in answer to Questions you have stated 14.

A. I would make my position clear. Suppose a man is married to a girl of 14. It may be the cause of some belief that he would be violating the religious injunctions if he did not cohabit at that age and serious consequences followed. In that case it would not be proper to penalise the holding of such a belief on the part of the husband if he does something against the law under such a belief. In the case of a stranger he takes the risk and the law should be as wide as possible. I never meant that the marriage limit should be 14. In the Maharashtra it is generally above 15.

Q. Do you suggest 16 for marriage?

A. Yes. After I sent in the statement I had occasion to discuss with many ladies and their opinion was uniform without an exception. They insisted on having 16 as the minimum age.

Q. And the same for Age of Consent within marital relations?

A. If the marriages are prohibited the question of consent does not arise; it automatically follows. If the boys are married and the girl attains puberty there will be cases where the husband really believes that he is called upon to do a certain thing. I know a case at Ahmedabad where serious consequences followed and the girl died. He was prosecuted for doing rash and negligent act and got 2 years. It may be a foolish act on his part, but he should not be punished.

Q. You think any connection after 14 should have no punishment laid down?

A. I mean penal legislation which affects social development and leads in stiffening people.

Q. What should be the Age of Consent in marital cases?

A. 14.

Q. You are assuming this if there is no law of the age of marriage? Supposing there was no law for marriage and the Age of Consent is to be raised you would rather raise it to 14 and no more?

A. Yes.

Q. What is this reference to the Indian Social Reformer that you have given in answer to Question 20?

A. You must have noticed the leading article in the Indian Social Reformer on the Age of Consent Committee. You say in your circular letter that the terms of reference of this Committee are confined to Sections 375 and 376, I. P. C. He is not satisfied with the terms of reference and the leading article is on that subject.

Q. We are debarred from entering into controversy over articles in the papers. Do you think Indian Social Reformer is an index of public opinion—orthodox and non-orthodox?

A. That will be in consonance with public opinion. The Indian Social Reformer is meant for Indian public opinion as expressed in this paper.

Q. It is for the witness to say which of the alternatives they would like, the marriage legislation or the Age of Consent law.

A. My reference to the Indian Social Reformer is that it is bound to be in consonance with public opinion.

Dr. Beadon: You have referred to cases which occurred in Ahmedabad District. Would you tell us when that happened?

A. About 17 years ago.

Q. Could you tell us of any case which occurred recently within your knowledge?

A. No.

Q. Have you noticed any difference between the children of young mothers and adult mothers?

A. There would be difference.

Q. Have you in your personal knowledge noticed any difference?

A. I have seen cases where a girl became mother at the age of 14 but that was long ago.

Q. Do you think marriageable age is increasing?

A. Automatically because of the social environments and boys themselves prefer to remain unmarried.

Q. Why do they not marry?

A. On account of education generally. I do not think it is economic consideration that comes in the way of marriage.

Q. Is it that they do not want to be burdened with wife or do they want to finish their education?

A. The sentiment has grown that to get married early is to have an outcaste position among the students themselves. I may tell you that in the Law College where graduates, M.As. and M.Sc.s. come, I have known many cases where the boys are unmarried even at the age of 25.

Q. Do you think that is the opinion of the ladies?

A. Yes.

Q. We have been told that if early marriage does not take place there may be immorality among the boys. What do you say to that?

A. That depends on the psychology. Poona is a fairly representative centre. We have several colleges and the number of students is about 5,000. The students' psychology is generally developed. There is mixed education also and there is a separate college for lady students. One or two cases may occur in which there may be loose behaviour but it is not generally the case.

Mrs. Nehru: Do you think the marriageable age is increasing with enough speed not to require any outside impetus in the way of social legislation?

A. If the marriage age is raised to 16 it will be some disservice to the automatic advance that people's minds are making.

Q. Is this automatic increase in the marriageable age common amongst the villagers also, or is it confined to the educated people only?

A. It is general. It is there even amongst the villagers. 30 years ago the normal age of marriage was between 10 and 12. Now it is normally 14. Nobody talks of marrying a girl before that. I am speaking of near about Poona.

Q. In answer to Question No. 2 you say, although the orthodox opinion is against the letter and wording of Sarda's Bill, there does not appear to be much difference regarding its principle. What exactly do you mean by this?

A. Confining myself to my parts only I don't think there will be any practical opposition to 14 and 18. People are following it already.

Q. Is the Age of Consent law generally known to people?

A. I don't think so. I think it is hardly known.

Q. Have people taken advantage of it anywhere?

A. No.

Q. Is there any defect in the framing of the law which is responsible for this?

A. I could not say.

Q. Have you any reason to believe that in this part of the country there is cohabitation before 13?

A. No. It may be in cases of monstrosity only.

Q. When you raise the Age of Consent to 16, would you like any other change in the provisions of the law to make it effective? For instance, to whom would you give the right of complaint?

A. To the wife.

Q. Wife would be the last person to make a complaint. Would you like to give it to recognised social reform organisations?

A. I would not regard that as safe. It would afford scope for wreaking vengeance.

Q. Would you like to have the previous sanction of the magistrate before proceeding with the case in order to safeguard against the misuse which you refer to?

A. No. I would restrict the right of complaint to the girl and her parents and relations only.

Q. These are the persons who are least interested in making a complaint. The law under these conditions will remain a dead letter as before. What is the use of giving a power unless you give it to those who will utilize it?

A. That only justifies the position on which I took my stand. Instead of accelerating these things by artificial legislation it should be left to social work which will automatically bring about the desired result.

Q. Would you like any changes in the punishment? Would you confine it to merely fine say, after 13?

A. I would have fine after 14.

Q. Would you like the parents of the girl or the boy himself when he is over 18 to give security bonds to keep the boy and the girl separate?

A. No bond is necessary.

Q. Will not the offence be repeated unless you separate them?

A. I repeat that that only supports the position I took my stand on.

Q. Would you like the age of marriage fixed?

A. Yes.

Q. As it is an essential thing to protect young girls, and as it may not be possible to have a legislation fixing the age of marriage would you in the alternative have the Age of Consent made effective?

A. Yes.

Q. Then don't you think that instead of sending the boy to the jail we could separate the two by taking this bond and thus making the law effective?

A. I would not oppose it. I could not say how far it would be workable.

Q. When the punishment is reduced to such an extent as to taking bonds only would you not give the power to social reform organizations to make a complaint because there will be no risk?

A. I agree.

Mr. Mitra: Are you against all social legislation or you want the marriage age to be fixed at a lower limit, considering the circumstances?

A. I am not, on principle, against the age being fixed.

Q. Personally you are not against the age of marriage being fixed.

A. No. But early marriage does not necessarily mean early consummation. In olden days about two generations back we had marriages performed at the tender age of 5 or 7, but consummation was very rare before the girl was completely developed. But now with the breaking of the joint family the whole influence goes away. But when there is early marriage we need not assume that consummation would follow. Formerly it was not so.

Q. You have said that evil consequences follow from early marriage. Your standpoint is that there are very few early marriages. The age is automatically rising. But I am speaking from the point of view of whole of

India. As a jurist, would you consider that there should be legislation fixing the age of marriage?

A. I would not oppose it.

*Chairman* : Your position is this. You are not against social legislation; out of the two, Age of Consent and the age of marriage, you would preferably have the age of marriage fixed and that you are very doubtful about the Age of Consent being effective but you would have it if there is no marriage legislation.

A. Yes.

*Mr. Mitra* : You have quoted several passages showing the nature of the religious injunction which lays down that consummation should take place before or at puberty. Will you kindly refer us to the passages in the Vedic literature where they are for adult marriage?

A. There could not be "Chatnrthik Home" for instance, if there was pre-puberty marriage. It assumes puberty. After the Lagna Patrika ceremony is done and the new name to the wife has been given in the morning this ceremony is performed. It means that puberty has been reached.

Q. We have been told that in Vedic literature we find mostly or wholly reference to adult marriages and no child marriages. Is that correct?

A. It should be so. We have had valiant days.

Q. Do the references you have given us relate to early marriage or early consummation?

A. For early consummation.

Q. What is the system of registration of births here?

A. As soon as a child is born we go to the municipality and register it.

Q. What is the practice in villages?

A. They also have registers and those entries about the date, time and place of birth are accepted for the purposes of evidence.

Q. According to the Hindu law as soon as a girl is married her guardianship is transferred to the husband.

A. There is an exception. In some cases if the girl is of a very tender age the guardianship is suspended till she is fully ripe.

Q. Do you think that any enactment is necessary saying that as long as a girl is not 16 or till she attains her full physical development the guardianship should remain with the parents?

A. No. You are referring to social legislation. We have to look to the position of the girl not as a member of the family by birth but as a member by marriage. Unless she acclimatizes herself to the new surroundings I don't think this suggestion would work well.

Q. As regards trials, would you like that they should be conducted in camera? Would you support that proposal?

A. It is a matter of convenience. I have not thought over the matter.

*Moulvi Muhammad Yakub* : You know that this amendment raising the age from 12 to 13 was made only in 1925 and it has not been given full experiment. Why then is there any dissatisfaction about the state of the law?

A. Even at the very inception when the amendment was made there was dissatisfaction. There has been an agitation since 1925. The advance of one year was not an appreciable advance and it should have been more then.

Q. In answer to Question No. 2 you say, a general change in the social outlook has brought in its train a considerable change in the ideas about marriageable age of girls. Why is legislation needed then?

A. That is what I have been saying. The age is automatically increasing.

Q. You say that the very high rate of mortality is due to early consummation. A witness has informed us that among the women working in the mills and factories a high rate of infant mortality is to be found irrespective of the age of the mother.



A. It is so. Early motherhood is not the only cause. It is one of the causes.

Q. In extra-marital cases you want to raise the age to 21. You know that under the Indian Majority Act a girl becomes a major at the age of 18. She is competent to give consent about all matters. Why should she not be able to give intoligent consent to cohabitation?

A. It is a moral offence to cohabit with a man other than the husband.

Q. Is it not so at the age of 21?

A. It is. If she chooses there is nothing to prevent her.

Q. When she is fully responsible for giving her consent in other things, why should she not be responsible about giving consent to sexual intercourse?

A. Now that you are talking about sexual matters I will say that it does not take a man long to play upon the sentiments of a woman.

Q. That is equally true if she is 21.

A. We have to provide safeguards against erring minds and it may be law. The higher the age the better it is.

Q. Would it not be a legal anomaly if for other purposes the age of majority is 18 and only for sexual intercourse it is 21?

A. There is no anomaly. For sexual intercourse the age will be 21 and for other purposes it can be 18. The law would be quite clear. There would be a good wall between the two.

Mr. Bhargava: I understand that in extra-marital cases you want the age to be as high as possible?

A. Yes.

Q. I think the principle that a man should be presumed to intend the natural consequences of his acts will find favour with you.

A. Yes.

Q. A man can always plead religious injunction. Even for stealing or other offences a person can plead that he believed it to be his religion. It is open to him to do that in an ordinary case. Would you prefer that a man should be guilty because the consequences of his act are there?

A. I do not refer to merely pleading. That pleading must be accepted in a court of law, and surely a man is guilty if his very acts are such that make him guilty. If a man goes about doing a wrongful act he will take the responsibility for all consequences and the law will have its own course.

Q. If the Age of Consent is raised to 16 and a man says that the Shastras enjoin that he should cohabit before that age, would he be guilty?

A. The Shastras must support him.

Q. I understood you to say that the age should be fixed at 16. What is the principle underlying this recommendation?

A. There is no principle. You must cut somewhere.

Q. Would you like that in the case of a girl being less than 16 every offender should be punished?

A. Yes.

Q. May I know at what age were Bhim and Arjun married?

A. You will have to calculate. In the War of Mahabharata the age of Arjun was somewhere near 55. You have to deduct 12 years of exile. Which means 44. When the first marriage took place at Drowpadi's Swayamvar it must be after 25, and Drowpadi must be more than 16. It was a Swayamvar, the age must be at least 16.

Mr. Kanhaiya Lal: If there is a marriage legislation fixing the age at 16 would you consider that it would be consistent with the spirit of the Hindu Law?

A. If you ask me about the Shruti, I will say, it will be consistent. But as regards the Smritis there is a difference of opinion. Some would support

it and some would go against. There are *pros* and *cons*. It would be safer to enact the law, if it is in consonance with the sentiments of the people. Speaking for my parts, Maharashtra side, I will say that the people will adjust themselves to it.

Q. Would you say that the fixing of the Age of Consent at 16 will similarly be in consonance with the spirit of the Hindu Law?

A. It would be inconsistent both with the Shrutis and the Smritics.

Q. Amongst the authorities cited by you is Vashista who lays down that a woman should be approached during menses excluding the Parvas or festivals. Do you call this a direction or a mandatory injunction?

A. A direction. Taking chapters 5 and 12 together we can say that this injunction about the wife being approached during menses is relative and not absolute.

Q. Taking chapter 12 alone which prescribes the duties of a Snatak and says amongst other things that he should not climb a tree, ascend a well or blow fire with his mouth, can we say that the injunction requiring a husband to approach his wife during menses is nothing more than a mere recommendation?

A. Taken as a whole those injunctions are only recommendatory.

Q. In the case of marriage also the injunctions are recommendatory?

A. Yes.

Q. If we have a marriage legislation would it be advisable as an auxiliary to that legislation to have a system of registration of marriages or a record of all marriages giving the names of the marrying parties and their ages?

A. It would be a step which would bring you nearer your object, but there is a danger that this word registration might be misunderstood. They may take it to mean civil registration.

Q. It would be only a record.

A. I think it is a step in the right direction.

Q. Would you give the authority to maintain these registers to the revenue authority or to the municipal boards and district boards?

A. I would give that power to the caste panchayats. That will mean less opposition. The word registration may disturb the sentiments of the people.

Q. If we have a law fixing the age of consummation and there is an infringement of the law, would you like that these cases should go before a matrimonial court which may consist of a magistrate and one or two non-officials or would you like that it should go to an ordinary court and tried along with the ordinary cases in its own turn?

A. A matrimonial court would inspire greater confidence and will expedite the work. The rest is a matter of detail which I have not considered.

Letter, dated the 25th October 1928, from J. R. GHARPURE, Esq.,  
B.A., LL.B. (Hons.), Principal, Law College, Poona.

DEAR SIR,

Yesterday in the course of my examination before the committee I gave my general impression that the age of marriage has automatically increased in this part. After arriving here this morning I made a reference to the admission roll of the college and I subjoin the figures of the married and the unmarried students in the First LL.B. class. The figures will speak for themselves.

I find further from a comparison of figures that the average of the unmarried gets reduced in the Second LL.B. class which fixes the average age of marriage from 23 to 25 years.

*Statement showing the number of Married and Unmarried Students admitted in the Law College, Poona, from June 1924 to March 1928.*

**FIRST LL.B. CLASS.**

Year.	Term.	Number of married students.	Number of unmarried students	Total.
1924-25 . . .	First . . .	173	93	271
Do. . . .	Second . . .	161	104	265
1925-26 . . .	First . . .	164	96	260
Do. . . .	Second . . .	163	92	255
1926-27 . . .	First . . .	139	99	238
Do. . . .	Second . . .	156	114	270
1927-28 . . .	First . . .	173	141	314
Do. . . .	Second . . .	131	128	259

**Written Statement, dated the 25th August 1928, of Rao Bahadur  
L. V. PARULEKAR, Pleader, Ratnagiri.**

1. There is no dissatisfaction as such as people generally in this part of the country are lethargic about such matters unless they are stirred by a specific instance which creates commotion for the time being but is soon forgotten.

2. According to my opinion in these progressive days it is necessary to push forward as much as possible the date of cohabitation without much revolutionising the existing feelings of generality of the people in the matter and therefore the proposed change seems desirable.

3. In Ratnagiri District and also in the surrounding Districts the crimes of seduction and rape are not very frequent. The change that was made of raising the age of consent to 14 years was not generally and widely known and cases occur on the understanding that the law is the same as before 1925. It is not sufficient to make a law and keep it only on the Statute book. The knowledge of it must be made to spread to the farthest corner of the country.

4. The cases between husband and wife very rarely come out so as to attract public notice. No complaints are made on behalf of an under age wife if illtreated in any way by the husband as it is likely to ruin the whole life of the wife. Any interference with the relation existing between husband and wife is generally resented by the public. So I think that practically there is no effect of the amendment of 1925 (1) in postponing the consummation of marriage or (2) stimulating public opinion (3) generally marriages are put off beyond 13 years but not on account of the amendment of 1925 but on account of other causes such as educated public opinion want of finding suitable girls or boys for marriages, etc. The only way of bringing about satisfactory relations between husband and wife is to educate public opinion and also to prevent early marriages so that there may be no likelihood of any cohabitation at improper time.

5. The puberty age in this part of the country is generally between 14 and 15. In educated classes it comes up sooner than in ignorant classes especially the working classes.

6. (1) In this part of the country cohabitation is not common before puberty, (2) it comes soon after puberty, (3) age is not so much cared but generally it is after 13. Very few cases come into court.

7. There is no particular time of religious injunction which is respected in this connection but consummation is brought about soon after puberty.

8. Garbhadan ceremony is usually performed in this part of the country unfailingly in the superior classes. It always coincides with the consummation of marriage and is performed soon after the attainment of puberty, i.e., within very few months if not a few days.

9. I do not think that except in very few cases attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage at least one or two years must pass so far as this province is concerned after puberty for physical development.

10. I think a girl is not competent to give an intelligent consent before 15.

11. There were recently cases here before the Sessions Court; in one a girl of about 8 years of the fisherman caste was raped by a man of the same caste of about 25 years of age injuring all the private parts. The man was convicted. It appears that under the treatment of the Doctor wounds were healed in about three or 4 months. There was another case in which a girl of Bhandari caste of about 13 was induced by a youth of about 25 of the Lingayat Caste by night from her parent's house and was concealed for two days where she was discovered subsequently by the Police. The parts were injured but as the Doctor was not called in for a long time it was not possible to ascertain the extent of the injuries but the girl complained of the injuries at the time of her deposition. There was also another case in appeal where a Bhandari unmarried girl of about 13 was induced by a maratha youth of about 25 from her parent's house and kept in concealment for some days. As this was a matter of mutual consent there was no evidence about any injuries but it was found that the girl was of developed character.

12. I think that early consummation and early maternity contribute a long way towards high maternal and infantile mortality.

13. *Vide* remarks in connection with 1.

14. Generally old fashioned ignorant women consider that consummation of marriage must be brought about after the attainment of puberty whatever the age but female education is now, though slowly, improving that state of affairs.

15. There are difficulties in the absence of any authenticated records municipal or otherwise it is difficult to determine the age of the girl. In certain cases I have found that the Doctors have given evidence from the development of the joint of the ankle bones as seen through X-rays if it is properly tested this would be sufficient means to minimise the difficulty.

16. I think so.

17. I would like to separate marital from extra-marital offences. The punishment in case of extra-marital offences must be somewhat more stringent than that in the case of marital offences. I think that the punishment for marital offences already prescribed is sufficient.

18. I do not think that any difference in the procedure is necessary.

19. I do not suggest anything.

20. In my opinion the fixing of higher age of consent and minimum age of marriage must go together and must be correlative with each other.

21. I very much rely on the progress of social reform by means of education and propaganda but at the same time I think this will be more effective if simultaneously there is the amendment in the Penal Law also.

Oral Evidence of Rao Bahadur L. V. PARULEKAR, Pleader, Anand Bhuvan, Ratnagiri.

(Poona, 1st November 1928.)

*Chairman* : I understand that you are the Government Pleader at Ratnagiri. For how many years have you been a Government Pleader?

A. For nearly 17 years and I am practising for nearly 40 years.

Q. Do you come across people in connection with these two questions, viz., early marriage and consummation, in the course of your practice and otherwise?

A. Yes. I do come across sometimes.

Q. Are you right in saying that the age of puberty in that part of the country is between 14 and 15?

A. Generally amongst brahmins it is 14 and amongst the working class a little later.

Q. You, therefore, probably think that there is no breach of the law of the age of consent which now stands at 13 and there must be very few cases.

A. Yes. There must be very few cases.

Q. Do you think that this law is known amongst the people?

A. No. Generally it is not known. I doubt whether the police know this.

Q. In your answer to Question 3 you suggest that the knowledge of the change of a law must be made to spread to the farthest corner of the country. What do you mean by it?

A. It must be made to spread through papers or by lecturing. I mean this should be done by social propaganda.

Q. You say that a girl is not competent to give an intelligent consent before 15. Is that your opinion?

A. Yes. Even I may put it a little later.

Q. What is that later age?

A. Sixteen.

Q. Then which is the proposed change that you would seem to uphold in answer to question 2? Do you mean Dr. Gour's bill to raise the age from 13 to 14?

A. I would like the age of consent to be raised to 14 and outside marriage to 16 as proposed by Dr. Gour's bill.

Q. But then if you are of opinion that a girl cannot give an intelligent consent before 15 perhaps 16, why do you put it at the age of 14?

A. This is a step towards something further which must be necessarily intended. At once a change will not be properly digested by the people.

Q. Supposing we raise the age to 14, is there any chance of these cases coming to Court?

A. No. I think however the cases will not come to court even if we raise the age to 16 within marriage.

Q. What is the reason for this?

A. As I said before, any change made at once will not be properly digested. First of all there must be generally the preparation of the mind of the people that there is such and such a law and there is penalty fixed and that understanding will ripen subsequently into a feeling that they shouldn't break the law. Unless there is something penalised the old practices will not go.

Q. Don't you think that there is a very powerful motive for the girl's parents and near relations not to bring such a case to light on account of the family prestige and the son-in-law going to jail, etc.?

A. Yes. That is to say ruining the life of the daughter and the feelings between them will be lacerated by the penal law. Nothing will be gained by 14 practically but theoretically we will gain.

Q. Are there pre-puberty marriages in that part of the country?

A. Generally marriages take place before puberty but in the cities and towns on account of certain inconveniences these marriages are deferred.

Q. Does consummation take place before 14?

A. No.

Q. Does it take place amongst the Bhandaris and the lower class mussal-mans?

A. Amongst them also these marriages are not consummated before 14.

Q. So I understand that throughout the Ratnagiri District marriages are not consummated before puberty, i.e., before 14.

A. No. They are not consummated before 14.

Q. Do you think that there is a large number of people there who feel the social difficulties of not having pre-puberty marriages?

A. Yes. They are generally afraid of the social difficulties.

Q. Do you think then they will get any strength from this new law?

A. Yes. It will strengthen their feelings.

Q. Have you any ideas about the punishment in these cases either in the penalizing the marriages or raising of the age of consent?

A. There is no question of punishment. It is a question of conviction; that means the fear of being sent to jail.

Q. Don't you think that the severity of the sentence or otherwise would have any effect?

A. The existing law is sufficient for that so far as the duration of the punishment is concerned.

Q. Have you got any Social Reform Societies in which women take part?

A. Formerly I didn't find any.

Q. To what community do you belong?

A. I belong to the Goud Saraswat community.

Q. Is that community largely represented in Ratnagiri?

A. Very few.

Q. Which are the main districts in which Goud Saraswat brahmins are represented?

A. Portions of Goa, Mangalore, Canara, etc.

Dr. Beadon : Can you tell us whether you have come across any marital case in the last few years?

A. There was none. Generally after marriage the cases are not likely to come.

Q. Have you heard of any such cases? Could you give us any details of one or two cases which might have come to your knowledge?

A. I have seen cases where I have got rumours that such and such thing is being done and especially amongst the lower classes.

Q. In answer to question No. 11. You say you have seen cases. Now what would be the age of the girl in which you have seen these cases?

A. About 15.

Q. Was it child birth or consummation?

A. Consummation.

Q. Have you met any cases in which a married girl gave birth to a first child at or about 15 and suffered much trouble? Would you give us one or two cases which happened in your own knowledge during the last few years?

A. My direct impression is I have seen one, but from the Municipal Records which are in my charge I have known of cases where on account of want of proper development and proper attendance there have been cases at least one or two every year—child dying and mother suffering and sometimes mother dying.

Q. Now in what communities these deaths take place?

A. These deaths take place amongst the backward classes in the Mahomedans called "Daldis" who are extremely ignorant, and don't allow any medical treatment, and marriages take place indiscriminately without any particular attention to age and we even find very difficult to record these births and deaths. And also these take place amongst the Maharattas and Bhandaris.

Q. You say you find difficulty in getting these births registered. Does the birth registration work satisfactorily in the City?

A. Yes. In the municipal towns it is quite all right.

Q. Do you prosecute them if they don't register the births?

A. Yes. We do prosecute them but generally we fine them.

Q. So may I take it that the registration of births is working satisfactorily in the Municipal areas?

A. Yes. We have been over-cautious in these matters now-a-days because we are taking particular care.

Q. For how many years you have been so careful?

A. The practice was lagging behind some 6 years before but since then we are very careful.

Q. Are these registers maintained permanently or are they destroyed after a certain number of years?

A. They are kept permanently.

Q. Do you have the names of the infants entered in the register at the time of registration of births?

A. The names are not known according to the Hindus. At the time we only write male or female.

Q. Then how do you find the identification of the child? Is there any sort of vaccination?

A. Yes. There is also vaccination and there we find the names.

Q. Would you be prepared to have a column for the name to be entered in the register and have the name transferred from the Vaccination Register so that the child can be identified later on? Can you suggest any ways?

A. There are two registers, viz., the birth and death register is in the Municipal Office and the Vaccination register is under the Government. So if some arrangement is made for transferring the names into the municipal register then there will be no difficulty.

Q. Have you seen any children of these immature mothers say 13, 14 and 15? What is their state of health?

A. Yes; I have seen. They are in good health too.

Q. Do you see more weak children of the mothers of 15?

A. I have no occasion to mark these children but I have seen children who have in some cases at least healthy though born to an early motherhood.

Mr. Mudaliar: Do you want the age of marriage and the age of consent to be the same?

A. Yes.

Q. Will you have the same age for penalizing marriages and for consent, viz., 15?

A. I won't keep any difference.

Q. But if the age of puberty is between 14 and 15 in your parts, do you think that the age 14 would do any good at all?

A. No; of course not; but there may be cases. So generally I am speaking of the puberty and when the law is made, of course every thing is covered by it.

Q. I don't see your point. The general age of puberty is according to you between 14 and 15 and if you fix the age of consummation at 14, it would do no good at all.

A. And therefore consent must be after 14. I have stated 15 but it ought to be 16.

Q. Then I come back to the position that we cannot advance beyond 14 as the age of marriage. Would you have the age of consent at 14 or 16?

A. I would have it at 16, as the first step. I will have for marriage even 16 and 18 for consent.

Q. Beyond merely being vague in its effect, do you think the law could be utilized to prevent these crimes if the age of consent is fixed at 16?

A. So far as marital cases are concerned, practically it will have no effect. But outside the Marriage it will have the effect.

Q. I am speaking of marital cases.

A. It will have no effect.

Q. May I ask you whether you are in favour of bringing these cases to book? If you are really in favour of bringing these cases to light, can you suggest to us any means?

A. No; I am not in favour of getting these marital cases punished.

Q. Who do you think will bring complaints in these cases?

A. Most probably the parents.

Q. To whom would you give the power of complaint only to the father and none else?

A. The girl of the father may be given the power of complaint and the police and a stranger will have nothing to do with it.

Q. Do you think a father-in-law in this case would accuse his son-in-law?

A. Not generally. Therefore the law would be ineffective in that it will prevent cases coming to court. Therefore we rely on social propaganda.

Q. What age would you fix in extra-marital cases?

A. Sixteen.

Q. Then you would have the same age both for marital and extra-marital cases. Do you think that the girl would be in a position to give an intelligent consent and understand all the consequences in case of rape by strangers?

A. I think at the age of 16 she will be in a position to understand things.

Q. But you have suggested that the age of marriage and the age when she will be in a position to make contracts should be 18. Have you any particular reason to suggest this?

A. No. As a tentative measure I have stated it as 16 but this ought to be 18 because in the beginning the public mind has to be educated.

Q. I am talking of extra-marital cases. Do you think here also there should be a gradual raising of age?

A. Yes. That ought to be gradual along with other matters too.

Q. Why should it be gradual?

A. I consider it necessary because there is a certain change. And as we are making a general law it is applicable to all.

Q. For whose sake do you want this consideration of gradual advance to be shown?

A. There may be bad cases of bad treatment to certain married women and perhaps on account of some ill-treatment or anything of that sort if a



woman falls a victim, to such person, it is for such girls or women who may prepare their mind.

*Q.* Am I to understand that you would put facilities in the way of an injured married woman going astray?

*A.* Yes. Sometimes I find that the marriage relations are not good and therefore it is necessary.

*Q.* Now that in extra-marital cases you realize there ought to be a gradual advance, from 16 to 18. Would you not consider the same about the intra-marital cases and not jump all of a sudden?

*A.* I think in marital cases 16 can be considered to be a fair advance for the time being from 13 to 16.

*Mr. Mitra :* You say in your answer to question 9 that mere puberty is not the physical development. May I take it then that the full development of the body of the girl is the first thing? Is that what you say?

*A.* Yes. I admit.

*Q.* As regards the trial it is just the other way. If you are to give liberty to the girls of 18 first and then to girls of 16, don't you think that it is just the reverse? You mean at once we may put 18 and we can gradually bring it to 16. Is that what you say?

*A.* What I say is that finally you should raise the age to 18 and when once it is raised to 18 it has not necessarily to come down at all.

*Q.* People say that this law has been enacted in 1925 and now you are going to make changes in 1928 and these frequent changes of penal legislation are not good. Even from their stand-point if there be no agitation and hue and cry, why should we not raise the age in extra-marital cases also?

*A.* Any change should not be made suddenly. There will be very little difference so far as the offences are concerned whether the change is made in the law or not. Instead of taking a sudden step I am for raising the age to 18 finally.

*Q.* Do you feel that there is nothing in the direction of frequent changes made in the penal laws?

*A.* My idea is that the law shouldn't be often changed. I quite agree there. At the same time where there is any hardship I would like to proceed gradually.

*Q.* If there is no apprehension of agitation amongst the people, why not make the change once for all?

*A.* It may be at once done.

*Q.* Do you want offences both in marital and extra-marital cases tried in camera or otherwise?

*A.* Both the offences in respect of marital and extra-marital should be tried in camera.

*Q.* There is a suggestion that punishment of fine alone will do in marital offences except when there is any physical injury. What is your opinion?

*A.* In marital cases I would suggest fine only.

*Q.* Would you like to make it compoundable with the permission of the Court?

*A.* I will agree to that also.

*Q.* Then there has been a suggestion that a security bond might be taken from the husband in the first instance separating them for a certain period. What is your idea about this?

*A.* I don't think it will be of any use.

*Q.* Do you think that the guardianship of the girl should remain with the husband or with the father until she attains her age?

A. Ordinarily it is transferred unto the husband; but as a safety for these girls and in order to make the whole thing consistent, necessarily the parents must have the guardianship until consummation.

Q. When does the garbadhan ceremony take place?

A. It takes place immediately after puberty.

Mr. Bhargava : In paragraph 3 of your statement you have stated that it is no use merely making a law but it should be spread to the farthest corner of the country. I mean this should be done by social workers. Is that what you say?

A. Yes.

Q. Do you want Government to take up this matter?

A. Of course the Government cannot.

Q. Supposing this object of yours, viz., making the people know what this law is about, succeeds within a year or two and everybody comes to know what this law is, then your point as regards the age in extra-marital case should be raised to 18 will disappear. Is that what you mean?

A. Yes.

Q. Then will there be no persons who are addicted to these crimes?

A. I admit that; but in such case you should accelerate the changes with longer intervals but don't jump at once from one step to another.

Q. Supposing this age is raised to 18 may I know who will be affected?

A. When a scoundrel knows this law then of course he will be prevented from his own voluntary act from doing anything still. What I say is that any change made should be practical and properly digested. That is my view and I hold to it strongly. As I have said, it is only by social propaganda and education that we can make the people know what the law is and what is about, etc., and I very much rely on these and if simultaneously there is the amendment in the penal law also, the law will be more effective and it will not be evaded by the people.

Q. May I know what is exactly in your mind? You want that punishment should be light. After all if the age of consent is raised, it is bound to interfere with the married life of the people.

A. What I mean is that if there is a law on the Statute Book it becomes an additional help to the people as a preparation of the mind to bring about these changes voluntarily.

Q. May I know if you want any further safeguards so far as this law is concerned, or do you want to leave the law on this point as it is?

A. I do not think that any further safeguards are necessary.

Q. As the law is at present, if a girl is below 12, every person is at liberty to report such cases. Do you want that this right should be taken away so that there may be no interference in the family?

A. The interference may be as it is now, but we ought not to emphasise the interference in any way or enhance it.

Q. Therefore do you think that the interference if any under the present law is not bad and that you would allow it to continue?

A. Yes.

Q. You say that in marital cases the punishment should ordinarily be fine. Do you think that even if the girl is 12 and the husband is 40 the punishment should be only fine?

A. In such cases I would have imprisonment.

Q. At present the punishment is 10 years or transportation for life. Do you think it may continue?

A. Yes. I think it may continue as it is.

Q. You say that the offences may be compounded with the sanction of the court. Would you have it even when the girl is below 12?

A. I say that the court should be given further discretion in that case

Q. Would you make the cases cognisable by the police?

A. No.

Q. Then who would enquire into the case?

A. I would like that in these cases it should be left to the person who brings the case to prove it just as in the ordinary cases, instead of allowing the police to interfere.

Q. In very serious cases, if there is no police investigation is there no likelihood of the evidence disappearing?

A. Such cases might be very few, and it is better that one person escapes instead of ruining many.

Q. In the same way would you agree that in proper cases it is better that one girl suffers in case her husband is punished, if you can prevent hundred other girls from suffering thereby?

A. Yes.

Q. So that in proper cases would you agree that the police should chalan a case because such cases will be very few?

A. I do not want police interference in these matters. Even in cases where there is seriousness in the offence I would leave it to the good sense of the parties. If the parties suffer they must thank themselves for it.

Q. Do you consider that this offence is an offence against particular people or do you consider that it is an offence against the State?

A. In the rape cases in the marital state there are very few cases of a rash act.

Q. But what about those very few cases. You say that it is immaterial if one girl suffers.

A. I do not want the police to interfere. I say that since the cases are very few one girl can suffer rather than that 99 girls should suffer by allowing the police to interfere into these domestic affairs.

Q. Would you like that separation order should be passed by the courts and security bonds taken from the parties under section 562?

A. Yes.

Mr. Kadri: You say you have experience in the Konkan about the Mussalman. Amongst them are there early marriages and early consummation?

A. To a certain extent. In the working classes it is early, but in the well-to-do classes it is different.

Q. Does consummation generally take place between the ages of 14 and 15?

A. Yes.

Q. And puberty is not reached before 14?

A. No.

Q. Is it not a fact that according to the Hindu Law as well as according to the Muhammadan Law consummation before puberty is not permitted?

A. Consummation does not generally take place before puberty.

Q. Do you think then that if the age of consent is raised to 14 there will be any objection?

A. No.

Q. Do you agree that if the law is there on the Statute book we must find out some means of making it effective?

A. Yes.

Q. You don't want to disturb family relations. But at the same time in serious cases would not you suggest that some steps should be taken to guard against risks?

A. But I would not do so at the cost of destroying the peace of the family.

Q. Will you have 16 as the minimum age of marriage for girls?

A. Yes.

Q. Now there has been a proposal that we might have a marriage register in which we might enter the ages of the marrying parties, their names and other particulars, so that we might know the ages of the parties when they are needed, and also sometimes the factum of marriage and particulars about the dowries amongst Muhammadans. Would you be in favour of the idea?

A. Apart from the difficulty of preparing such registers, I am in favour of it. But there are difficulties.

Q. At present there are the birth and death registers. They are properly kept in urban areas by the municipalities and in the rural areas by the Police patels. If the same officers are asked to register marriages do you think there will be difficulty?

A. I do not see any objection to it.

Mr. Kanhaiya Lal: Do you wish to make marital offences cognisable or non-cognisable?

A. I would make them non-cognisable.

Q. You might be aware that below 12 such cases are cognisable and after 12 they are non-cognisable. Are you not by your proposal narrowing down the chances of detection of these offences?

A. My idea is that if the whole thing is made non-cognisable so much the better.

Q. Would you be satisfied if marital offences are required to be investigated by gazetted officers not below the rank of Circle Inspector or Deputy Superintendent of Police?

A. Even if you make the Gazetted officer responsible for the investigation, in actual practice it is the lowest officer of the police who is asked to investigate into the case.

Q. The report will be signed by him and he will be personally responsible.

A. Usually the investigation is left to the subordinate officers and in the end the report is written in the presence of the Gazetted officer and he formally signs the report. Otherwise the work is generally done by the lowest officers of the police.

A. In your practice of 36 years have you known cases under 12 which are at present cognisable in which such a thing has happened?

A. No; there are very few cases of that sort.

Q. When the law was amended and the age was raised from 10 to 12 the same argument was advanced, namely, that the Police would oppress the people. Have there been any such instances within your knowledge?

A. It is not account of this particular offence that the people are against police interference. It is on the analogy of other offences.

Q. So far as marital cases are concerned have you got any basis to say that there will be oppression by the police?

A. No.

Q. If there has been no reasonable basis for complaint, is it right to apprehend that there would be such basis hereafter?

A. People consider that human nature being what it is, such things are likely to happen.

Q. In order to exclude vexatious complaints and malicious prosecution, would you require that every complaint in marital cases should be investigated under section 202 of the Criminal Procedure Code, and that there should be a preliminary enquiry before a notice, summons or warrant is issued. Would that be a sufficient safeguard?

A. But that would be only to prevent malicious prosecutions. It is for saving the accused and for the benefit of the accused. I have no objection so far as that point is concerned.

Q. Would you suggest any measures for bringing these cases to light?

A. In my opinion it is not the police that get intuitive knowledge. They usually get the information from some body else. What I would suggest is that instead of informing the police, and the police then acting on the information supplied, the man can give the information to the Magistrate, and the Magistrate after satisfying himself can take the initiative.

Q. Every body would be very cautious about making a report unless he has got materials for an enquiry?

A. There may be real cases in which proper information is given to the Magistrate, and if he thinks that there are grounds for him to proceed, he can proceed. There are always certain informers who would be ready to give information to the Magistrate.

Q. Those persons who have got the materials will not proceed if you make them responsible? They can inform the police, and the police can sift the material available, and proceed with the case.

A. The Magistrate can proceed on the materials available just like the police.

Q. Are you in favour of forming vigilance societies or panchayats in towns and in rural areas for the purpose of watching infringements of the law?

A. Yes.

Q. Should these Panchayats or Vigilance societies be of a communal character or of a mixed character?

A. I am always against things of a communal character. The best men from whatever community should be chosen.

Q. Do you think they should be of a voluntary character, or should they be partly elected and partly nominated?

A. I am not for the thing being either wholly elected or wholly nominated. My idea is that election and nomination combined would be the best thing.

Q. Would you give power to social reform or women organisations to make complaints or initiate prosecutions?

A. If they are properly conducted and properly constituted, they will be the best persons for making complaints and prosecutions.

Q. You said that the registers of births are maintained fairly satisfactorily in town areas. Are they satisfactorily maintained in rural areas also?

A. In the rural areas they are not maintained so satisfactorily as in the municipal areas.

Q. In the rural areas is there an obligation on the persons to report?

A. Yes; there is obligation under the rules.

Q. Would you be in favour of the grant of free birth certificates to the reporting individuals?

A. I have no objection.

Q. Do you think that if this certificate is preserved it will be helpful for proving the age and identity of the boy or girl?

A. In the rural areas very few people will care to preserve fragments of papers in their possession for a long time, for its being available in case of need.

Q. If some people care to keep it, do you think it would be advantageous?

A. Of course it would be.

Q. As regards registration of marriages, would you similarly be in favour of the grant of certificates to the parties reporting the marriage? Sometimes there is the likelihood of the records being destroyed by fire, and in such cases would it not be useful?

A. Yes.

**Written Statement, dated the 15th August 1928, of Mr. A. Y. KATE,  
President, District Local Board, Poona.**

1. The cases under sections 375, 376 of the Indian Penal Code in this part of the country are very rare and hence the public opinion on that point is rather indifferent.

3. The crimes of rape or seduction are not frequent in this part of the country; so further questions do not arise.

4. In the case of advanced communities the age of marriage has been generally raised beyond 14 years.

5. The usual age of attaining puberty is 14, in some cases it varies from 13 to 15. In well-to-do classes it is higher than that among the working classes.

6. (1) Cohabitation before puberty is not common.

(2) In the case of girls married before attaining puberty, cohabitation soon after puberty is common among all classes.

(3) Cohabitation is allowed before the 13th year is complete, if the girl is married and attains puberty before completing that year.

7. The practice of early consummation of marriage not before but soon after puberty is due to religious injunction.

8. Garbhadhan ceremony is usually performed in this part of the country and it coincides with the consummation of marriage. It is performed after the attainment of puberty. If the girl is married before puberty then it is performed in the month of her attaining puberty. If married after puberty then after her first monthly course after marriage.

9. Attainment of puberty is not always a sufficient indication of physical development. The age for consummation should be fixed at 16 when the development is sufficient to justify consummation.

10. At the completion of 15th year.

12. It is due to poverty and consequent low vitality.

**Oral Evidence of Mr. A. Y. KATE, President, District Local Board,  
Poona.**

*(Poona, 1st November 1928.)*

*(In Marathi.)*

*Chairman:* How long have you been President of the Local Board?

*A.* Since April 1928.

*Q.* Where were you before you became President of the Poona District Local Board?

*A.* I was in the Indapur Taluk, Poona District.

*Q.* Is your experience confined to the Indapur Taluk only or does it extend to the whole of the district?

*A.* I know generally about the Poona District.

*Q.* What is the number of the Marathi speaking people in the Poona District?

*A.* About 75 per cent.

*Q.* What is the usual marriage age amongst the people?

*A.* It is about 10 or 11.

*Q.* Is Garbhadhan ceremony observed in this part of the country?

*A.* Yes. But the girl is not sent to her husband till she has attained puberty.

Q. What is the usual age of puberty amongst the people?

A. About 13 or 14.

Q. Have you come across girl mothers below 15 or 16?

A. In very rare cases girls attain motherhood at 14, but there are many cases at 15 and 16.

Q. Is the present law fixing the age of consent at 13 known to the people?

A. It is not generally known to the people.

Q. Would you have the law of the age of consent within marital relations?

A. Yes; but offences against the law should be tried by the Panch.

Q. Does public opinion favour the law of the age of consent or the age of marriage?

A. Public is in favour of the age of marriage being fixed at 13. The age of marriage should be fixed at 13 for girls and 20 for boys.

Q. What would you have as the age of consent in marital cases?

A. The same age as the age of marriage, i.e., 13.

Q. Are there cases of consummation of marriage before puberty?

A. Yes; there are cases, though consummation does not generally take place before puberty. But amongst the backward classes consummation sometimes takes place before puberty.

Q. Amongst what classes does it take place?

A. The Kumbies and other lower classes. It is common amongst the Marwaris also. Amongst the Marwaris and the Kumbies, the girl is sent to her husband's house soon after marriage, and consummation sometimes takes place even at 10 or 11.

Q. Will there be dissatisfaction amongst the backward classes if the age of marriage is fixed at 13?

A. Yes.

Q. Why are you opposed to the age of consent in marital cases being fixed at more than 13?

A. Because I think the girls will suffer more if there is an age of consent law in marital relations.

Q. What would you have as the age in extra-marital relations?

A. 18.

Q. Do you think that fixing the age of marriage at 13 would help us in achieving our object, namely, the prevention of early consummation and early maternity?

A. Personally I am for fixing the age of marriage at 16, but there will be dissatisfaction amongst the public if the age is fixed at more than 13.

Q. Do you think that child mothers of 14 or 15 or 16 do generally suffer?

A. They are poor in health and do suffer.

Q. Do you know of any cases in which the child of an early mother suffered?

A. I know of a case in my own village; the girl was 15. The child was very weak and died in its fifth month.

Q. To what caste did she belong?

A. Sangar caste.

Q. When did it happen?

A. It happened about 18 months ago.

Q. Do you know of any other cases like that?

A. I know of another case. The child survives, but it is very weak. The mother is 15 or 16.

Q. Were these first marriages?

A. Yes.

Q. Have you come across any disparity in the age of the husband and the wife, for instance the husband being 40 or 50 and the wife 12 or 13?

A. No; the difference between the age of the boy and the girl is generally 6 or 8 years.

Q. What is the lowest age at which girls are married?

A. It is sometimes even 5 or 6.

Q. In such cases when does consummation take place?

A. The girls are not sent to their husbands' houses before they attain puberty, and therefore consummation does not take place before puberty, though it may take place before the girl is 13.

Q. Is there a belief amongst the people that marriages should be performed before puberty?

A. Yes.

Q. What is the condition of education amongst the people in the rural areas?

A. Very few people are educated. Hardly 5 to 10 per cent. amongst men are literate and hardly 1 per cent. amongst women.

Q. What is the reason for cases in marital relations not being brought to light?

A. Hindu females are bashful, and they do not like to bring cases against their husbands with whom they have to pass their lives.

Q. Has there been any movement amongst you for increasing the age of marriage?

A. No; there has been no such movement.

Q. Have there been any conferences in which this question was discussed?

A. These questions are debated in the conferences, but such conferences are mostly confined to the higher classes and the lower classes are left untouched.

*Mr. Mitra:* What is the system of registration prevalent in the rural areas?

A. The Patels and Talatis register births and deaths.

Q. Can we get accurate information from these registers?

A. The names of the children are not usually entered. Where they are entered you get correct information.

Q. Is there any means by which we can improve the registers?

A. I do not think the present system can be improved. If however we exercise stricter control we can get accurate information.

Q. When are the names of children usually given?

A. The names are given usually one or two months after the child is born. Generally we ask for the names and enter them in the registers.

Q. Is there a column for the names in the register?

A. There is a column for the names of the children, but it is not entered in all cases. Sometimes any name is inserted in the register at the sweet will of the official.

Q. Are you for the age of consent law if we cannot have a marriage law?

A. Personally I am for the age of consent law, but considering the beliefs and traditions of the people, I would not advise the passing of the law of the age of consent.

Q. Do you think some period should elapse after puberty before consummation takes place?

A. Yes; I think the interval should at least be one year.

Q. What age would you consider to be the proper age of marriage for girls?



A. In my opinion there should not be marriages before 14. But as a first step I would have it fixed at 13.

Q. Is there any belief amongst the Marathi speaking people that marriages should take place before puberty?

A. Yes.

Q. If the age of marriage is fixed at 13 in some cases puberty will take place before 13 and the marriage will therefore be after puberty. Do you think that people will accept that?

A. I think they will accept it.

Q. Will there be dissatisfaction if the age of consent is 13 as it is under the present law?

A. No; there will not be dissatisfaction.

Q. Who maintains the registers of births and deaths?

A. The Patel or the village officer.

Q. Supposing the man who makes the report is an illiterate person, does he give his thumb impression?

A. The Patel simply gets the information; he does not get the thumb impression of the individual who reports.

Q. Is there any obligation on the parents or guardians to report?

A. No.

Q. To whom does the Patel send the report?

A. The Patel sends reports every month to the Thana. The original is retained and a copy is sent to the Thana.

Q. Does the name of the child appear in the original or the copy?

A. No.

Q. If there is no obligation on the parents or guardians how will the births be reported?

A. The village watchman reports all the cases to the Patel and the Patel takes them down and makes a complete enquiry.

Mr. Kadri: Do you not think that there should be adequate protection for the girl, and would you not therefore fix the age of consent in marital relations at more than 13?

A. My own view is that there should be protection to the girl till she is much more than 13. but as the people would not be prepared to accept more I would for the present fix it at 13.

Q. Amongst the educated classes when does marriage ordinarily take place?

A. It takes place at or after 14.

Q. Do you not think that if the law is there, it will protect the uneducated classes?

A. Yes; if the law is there people will follow it.

Q. Can you suggest any remedy for the prevention of the high infantile mortality which prevails amongst us?

A. No; I cannot suggest any remedy.

Q. What measures would you suggest for bringing cases under the marital relations to light?

A. I think Government should give powers to District Board Presidents and Local Board Presidents for trying these cases.

Q. Would you like to have these cases tried by specially constituted Matrimonial Courts consisting of a magistrate and two non-officials or purely of non-officials?

A. I would like that there should be one magistrate and two assessors, preferably belonging to the same community as the offender.

Q. What punishment would you award in such cases?

A. The punishment should be very light in such cases. I would suggest that the offender should not even be fined but he should be put to shame. Section 562 of the Criminal Procedure should be freely resorted to in the case of marital offences.

Q. Supposing this is done, or a bond is taken from the husband or the parents of the parties for the separation of the wife and the husband for a certain period would there be any objection to raising the age of consent within marital relations to 14?

A. No.

Q. Would you be in favour of maintaining a marriage register in case there is a marriage law?

A. There is no necessity for a marriage register. If a marriage takes place before the age fixed, enquiry can be made at the time.

Q. By whom?

A. The local authority or Patel will generally enquire about the age of the parties at the time of marriage. The power to investigate into and prevent marriages before the age fixed should be given to the Patels by law.

Q. Would you be in favour of a system of licenses to be given to the parties to the marriage before the marriage is celebrated?

A. Yes; there should be a system of licenses and the licenses can be given by the District Boards or Local Boards and the village Patel will allow the marriages on the production of these licenses. If the Patel has any suspicion, he can enquire into the impending marriage, and should have power to stop it. In such cases his decision should be subject to appeals.

Mr. Kanhaiya Lal: As regards fixing the age for marriage, would you not fix a higher age, and allow exemptions in special cases?

A. You can give exemption in special cases but not in the case of special castes, for reasons to be given.

Q. Is there not a physical degeneration in all classes of the Hindu community?

A. Yes; people are degenerating in health now-a-days.

Q. If you do not raise the age of consummation how can we have a stronger and healthy progeny?

A. I cannot put physical degeneration to this one cause. There are other causes also.

Q. If this is one of the causes, is it not right that we should take steps to check it?

A. Yes; it should be done.

Q. Would you not recommend that in order to check this evil we should have a higher age for consummation, say 15 or 16?

A. Personally I am for fixing the age of consent at 16, but for the purposes of the law, we have to take into account the public view.

Q. Do you not think that legislation should be introduced in the interests of society to prevent further degeneration?

A. Really speaking there is no objection to this, but then even under the present age of consent law no cases have come to court.

Q. Are you aware that even under the present law when it is 13 about half a dozen cases crop up every year?

A. There may be cases but I have never heard of them.

Q. Do you know that according to Sushrut and other ayurvedic authorities a girl is not fit for maternity till she is 16?

A. Yes; 16 is the proper age; but public opinion will not go beyond 13 at present. Gradually, however, it may be raised.

**Written Statement, dated the 16th August 1928, of Mr. P. BUNTER,  
B.A., LL.B., Public Prosecutor, Poona.**

1. Yes. There is an increase in the number of cases under sections 375 and 376, Indian Penal Code.

2. It is necessary to make an advance on the present law by raising the age of consent. There are several reasons for this, *viz.* :—(1) A brutal husband thinks that he has a right over his wife however delicate she may be and unfit for cohabitation. Cases have come to light where the girl who was about 14 years of age had been compelled to cohabit with her husband.

3. Seduction and rape as I have said is on the increase and the amendment of the law in 1925 has not succeeded in preventing or reducing the number of the cases of rape or improper seduction of girls for immoral purposes. The measures that I would propose are that the punishment should be deterrent. A year or two of rigorous imprisonment is not sufficient punishment and I would suggest that flogging be added.

4. (1) The amendment of 1925 has to some extent been effective in protecting married girls against cohabitation. There was a case very recently where a married girl about 13 years or so had been raped. The Medical evidence showed that previous to this offence she had cohabited with her husband.

(2) The public opinion is in favour of the amendment.

(3) Attempt is made in the direction of marrying girls at the age of 12 or so, but amongst the poor and low caste people the age of marriage is very much below 13.

I would suggest marrying girls below the age of 13 or 14 years should be made punishable.

5. The girls attain puberty in this part at the age of 14. But this is not a rigid rule. Much depends on the nourishment and the comforts in which a girl is brought up.

6. It is difficult to point out by cases whether cohabitation is common before puberty or soon after puberty or soon after the girl completes the age of 13. One or two cases have come to light but I feel that this is prevalent amongst the lower classes.

7. Nil.

8. Garbhadan Ceremony is performed in this part of the country and it is usually anterior to the consummation of marriage amongst the upper classes and it is generally performed soon after the attainment of puberty.

9. No. At least 3 or 4 years after a girl attains puberty.

10. I think at the age of 16 or so and much will depend upon the girl's intelligence and education and her ability to understand the consequences.

11. I have heard of cases where cohabitation before puberty has resulted into injury to the girl; but personal knowledge I have none.

12. I should think so, but this is a medical question.

13. Yes. There has been. I cannot say that it is general, because the masses are not capable of realizing the benefits to be derived thereunder.

14. No.

15. Difficulties have arisen in determining the age of girl for cases under sections 375 and 376, Indian Penal Code. The Medical evidence is very often vague. The only remedy is the keeping of Birth Registers and registering Births.

16. Yes. I think so.

17. I would separate extra-marital and marital offences into different offences. I would retain the punishment under section 376, Indian Penal Code, but in the second case raise the term to 5 years.

18. In the case of husbands I suggest that they may be tried by Magistrates of First Class, Presidency Magistrate or by the Court of Sessions, but in the other case—extra marital—exclusively by the Court of Sessions.

19. It is a big question and one will have to go into minute details. The question needs certain amount of illucidation.

20. Yes; fixing a higher age of consent.

21. I would prefer to rely on the strength of penal law. The social propaganda and education are slow methods and great havoc will be done before any advance is made in that direction.

### Oral Evidence of Mr. P. BUNTER, B.A., LL.B., Public Prosecutor, Poona.

*Chairman* : I understand you are Government Pleader and Public Prosecutor?

A. Yes.

Q. I believe you know a good deal about Indian Christian community?

A. Yes.

Q. And also backward classes?

A. Yes.

Q. May I say about the whole of Poona District?

A. I should think so.

Q. What is the marriageable age of girls among the Indian Christians?

A. From 14 or 15 upwards. There are very rare cases of 14 but there have been cases where girls were married at 14 or 15 but these are exceptional. As a rule the age is 16 or over.

Q. What is the age among the depressed classes?

A. The age is very low; they may marry at 3, 4 or 6 years.

Q. Also backward classes?

A. Yes, but among them you see some improvement as compared with the depressed classes. Within the last 10 years the improvement is marked and they have raised the marriageable age 10 and upwards and there is a tendency to marry late. Depressed classes do not care.

Q. Have you any reason to believe that in those cases in which marriages take place early consummation takes place before 13 in a lot of cases?

A. I would not say in a lot of cases but I am told that these cases do not come to light.

Q. But they do occur?

A. Yes they do occur.

Q. The case that you have mentioned in answer to question No. 2 is a solitary case or do you think there are many cases like that?

A. Such cases are not exceptional but these are common cases because some husbands think that wife is a part of property and he has every right to treat her and use her as he likes best.

Q. You say in answer to question No. 4 'I would suggest marrying girls below the age of 13 or 14 years should be made punishable'. Do you mean penalising marriages below a certain age?

A. Yes.

Q. In answer to question No. 20 you say that you would like fixing a higher age of consent. Do you mean to say that you would like to have both the laws—the marriage legislation and the consent law?

A. Yes.

Q. What age do you suggest for girls and boys?

A. Marriage age of girls should never be below 16 and of boys never below 18.

Q. And age of consent?

A. 16 for girls. If that is not prescribed then it happens that you have a very poor progeny and the life and health of the mother is greatly at stake.

Q. I think you will easily concede that the statutory age of consent of 13 has not practically been effective?

A. It has not been but there is the Damocles sword hanging over people and there is a terror which they feel. Though it has not effectually done it yet it is teaching people to go up to that standard.

Q. How are we to make the law more effective?

A. To begin with for some years it will be difficult but as time goes on and in one village if a case is caught and punished it would mean that it will have a great effect not only in that village but in the surroundings also.

Q. With regard to marital cases the important motive that we are told is scandal attached to such a case coming to light and the fear of son-in-law going to jail. These are the powerful motives why these cases do not come to court. Do you agree?

A. That is one of the most potent reasons.

Q. Your remedy is to raise the age of consent to 16 but this motive still remains all the same—perhaps more?

A. In that case very often it does happen that the father and the mother of the girl who have higher standard of living in order to protect their child may be prepared to sacrifice the son-in-law. There may be stray cases of that kind.

Q. Even if there are stray cases you would not say the law has been effective?

A. If out of 100 one such case came to light, others would feel that because it has been done it may be done in my case also. The law may not be effective but the check will remain and that is what you want.

Q. If so far it has not been effective what is the magic in raising the age of consent to 16 that it will make matters more effective? The scandal involved is the same, the motive is the same, then what are the special reasons?

A. Although 13 has not been very successful to-day but people to-morrow will think that 13 was a small age and could not be detected but with 16 they cannot escape. For them the law is neither necessary nor would it come into effect. If the law is effective in one case out of 100 you will have done a great service to the community.

Q. You mean it will have a deterrent effect.

A. Yes.

Q. Are you really in favour of flogging if it is added?

A. Most decidedly. In all sexual offences it is always very much better than sending a man to jail. Even in extra-marital cases what is sauce for the gander is not sauce for the goose. Instead of sending him to jail with a lot of criminals this sort of punishment will certainly do him good.

Q. Do you know anything about registration of births in villages?

A. As far as I know in Poona District the births are more or less regularly registered by the Talatis and the frequent visits of the Malmatdar or Maharkar as the case may be keeps the registers up to date. To my knowledge when the provincial officers and the Collector visit a village they ask for this register, so that this register is always up to date.

Q. Have you ever been in a Collector's camp?

A. Very often.

Q. How many registers is he supposed to see?

A. About 20 or 25.

Q. Do you think that sort of so-called inspection is a check on the register?

A. That is one way but the Malmatdar goes to the village several times and he invariably during his visits does see these registers.

Q. You think in Poona District registers are better.

A. Very much better and rural areas are much more regular.

Q. Have you any experience in the courts during your profession of seeing any trouble about the determination of age?

A. Medical evidence is always challenged and it is halting. It makes you think that the age is this and that and it is sometimes accepted and sometimes benefit is given to the accused. If we have this register then there will be a complete check.

Q. I see that you advise the only remedy of keeping birth registers?

A. Yes, more accurately. The date can be ascertained by this way. If you find that in the previous entry against the same parents there is a son and the subsequent entry is that of a son then that particular entry relates to the girl.

Q. Would you like to have the name added?

A. I saw 8 days ago the name of the child was also added. The other party said if it was prepared on the same day how it was that name was there. The register was made and name was entered to make it look more accurate.

Q. What age do you suggest for extra-marital cases?

A. I would suggest 17. It must be a year beyond the marital cases. In one case it is a question of married wife and in the other outside marriage and in order to get her consent she must have greater intelligence and more independent judgment to be able to give valid consent where her person is violated.

Q. You have said that she can do so at 16?

A. It is the minimum that I have suggested. I would rather have it at 17.

Q. Can you say from your knowledge whether there would be any dissatisfaction if a law penalising marriages were made 14 and 18 or the age of consent raised to 16?

A. There would be some dissatisfaction but little children do not know their own interests and therefore the paternal care of Government ought to step in at this juncture to teach people to live better.

Q. But you realise there is a very large amount of orthodoxy especially in the Poona District?

A. Orthodoxy does not mean right thinking.

Q. Can you suggest any measure by which marriages may be permissible at any age but almost a certainty may be attained in putting off the consummation to 16? Do you think there is any method by which we can reconcile the two views?

A. It is very difficult to say. Taking the public opinion some would say that they should see the desirability in their own interest or by social propaganda but the advance has been so slow that I would rather have coercive legislation.

Q. The age of 12 and 13 was inserted in the Penal Code from penological consideration but any advance above 13 said to be for the purpose of social legislation is unnecessary to prevent the social evil. Do you think for that reason you would have a law dealing with marriages from 13 to 16 for removing this social evil? Would you like that this should be introduced as a social legislation?

A. To have another law whether it is to be in the Penal Code or whether it is to be in any other code if it is penal it makes no difference.

*Q.* Of course there is a very great difference. People would not like calling a connection between a married husband and a married wife as rape and there is a good deal of sentiment attached to it. Would you advise that in order to prevent this social evil we should have a law apart from the penal law which latter should be kept at 12?

*A.* I must give it a very careful thinking. I cannot answer it at once.

*Mr. Kanhaiya Lal:* Do you want flogging in marital cases or in extra-marital cases?

*A.* I think in the case of a husband it would be better to administer flogging instead of sending him to jail with other criminals; but in extra-marital cases there should be imprisonment as well as flogging.

*Q.* In marital cases you recommend that punishment should be raised from 2 years to 5 years and flogging added to it. Don't you think this will render the possibility of cases coming to court still narrower.

*A.* Five years is the maximum penalty but it does not mean that usually more than 6 months will be given.

*Q.* So far as the educative and moral effect is concerned it might serve some purpose but when we come to practical considerations, is it not true that no girl and no father or guardian of the girl would bring to light a case which will send the son-in-law either to whipping or to jail for such a long period?

*A.* What you say is quite correct but as I have suggested before if one out of 100 is brought to light that would be sufficient to show that the law is there to punish such cases. Without the law you cannot do anything.

*Q.* But stringent legislation sometimes defeats its own object and even the one case which is being brought to light may not come to light if father-in-law or mother-in-law find that this would be the result of their complaint?

*A.* The first object is to create a deterrent effect and when a case does come it is not necessary that the person will be punished with 2 years because 2 years is prescribed. The higher the punishment the more the public would see that the offence is a very serious one.

*Q.* Would you make the offence cognisable or non-cognisable?

*A.* I would make it cognisable.

*Q.* There is a great distrust of police methods in the country. Can you suggest anything for obviating the difficulties arising out of this distrust?

*A.* I know my District. The whip hand which the S. P. and the D. S. P. are holding during the last 10 years I have not found anywhere. Even elsewhere where there is said to be distrust I think unless an outside agency investigates the offence it will be natural both for the father-in-law and the mother-in-law to hush up.

*Q.* Would you like to constitute vigilance societies or panchayats for the sake of watching and looking after these cases?

*A.* These will be very useful safeguards.

*Q.* You think it will be practicable to constitute societies both in towns and rural areas—they may be either women's societies or panchayats?

*A.* It all depends on the personnel of such committees to make their existence felt. At first their influence and their fear may not be effective but as time goes on they will be effective.

*Q.* Would you form them out of certain communities or they may be cosmopolitan societies?

*A.* Cosmopolitan of course. If they are clannish they would not be able to achieve much. If you have them by combination of different communities working together harmoniously with one object in view they would be very effective in this particular case.

Q. As a possible safeguard to harassment would you recommend that enquiries in these marital cases should be conducted only by accepted officers of the police like the Circle Inspector or Deputy Superintendent of Police?

A. I would say nobody below the rank of Sub-Inspector. Even in murder cases a head constable would go and finish the enquiry started by a Sub-Inspector. It so often happens, that a Sub-Inspector may start an enquiry but on another day there is another murder; he then leaves the first enquiry to the head constable and attends to the fresh enquiry. In this case nobody below the rank of Sub-Inspector should be empowered. If the Sub-Inspector is required at some other place then a higher officer may attend.

Q. As a further safeguard, the object being to exclude all possible frivolous cases or vexatious cases, would you insist that all marital cases should first be investigated by a District Magistrate under Section 202 of the Criminal Procedure Code, that is to say there may a preliminary enquiry before notice or warrants are sent to the accused?

A. When a charge sheet is sent up by the police or a formal complaint is lodged by the vigilance or social committee as you suggest it would not take more than an hour to the Magistrate to detect anything. Either he should have an enquiry or he should take due care to protect the interest of the accused. I think that would be a sufficient safeguard.

Q. In these marital cases which involve interference into domestic affairs is it desired to have a strict exercise of his discretion than in ordinary cases because it would mean destruction of the family at times.

A. It would certainly be more advisable to make a preliminary enquiry under section 202, Criminal Procedure Code.

Q. Another suggestion has been made that in order to inspire more public confidence marital cases might be transferred after the preliminary enquiry to a matrimonial court consisting of one magistrate and 2 non-officials. Would you recommend that system?

A. I do not think the public confidence will be readily shaken because there is the Sessions Judge.

Q. Would not the association of 2 non-officials be better?

A. But you have got non-official jury of 5 members. It will complicate matters and by complicating we are not likely to gain any substantial advantage.

Q. The jury has to appear in so many cases during the year so that each man comes up every 3rd or 4th month.

A. In Poona we have a jury which comes up only once a year.

Q. Is it not possible to have a better class of men to sit as judges with the magistrates and form a matrimonial court?

A. I would certainly suggest a special jury. There should be a list of special jury and any man from the panel of special jury would answer the purpose you have in view. There are two ways of doing it—either by assessors or by a judge. I may tell you that a judicial officer is the best man to assess a sentence.

Q. Do you want that all marital cases should go before a Sessions Judge irrespective of age?

A. They may go to a first class magistrate or a Sessions Judge.

Q. Then you cannot recommend that 5 years should be the maximum punishment?

A. But it is triable by a first class magistrate or Sessions Judge. Or we may say 3 years.

Q. In order to restore good feelings between the husband and the wife would you like the cases to be compounded with the sanction of the court or without the sanction of the court?

A. It is a desirable thing but it should not be made just to serve the special purpose because for the time being he may shed a lot of crocodile



tears. I think the judge may allow compounding provided he is satisfied that the man is really penitent.

Q. Would you recommend that there should be registration of marriages?

A. I have always advocated that it should be done.

Q. Who should be the authority on whom the obligation of maintaining these registers should be placed?

A. It is a question which will have to be gone into by a separate piece of legislation because there are so many conflicting interests.

Q. Would you recommend that an executive authority should maintain these registers or the municipal boards or the district boards as they do in the case of births?

A. District and local boards are so many miles away from the villages. You take Poona itself. The local board of Haveli taluka has its headquarters in Poona an area of 20 or 30 miles around. So they cannot keep an effective eye.

Q. Then out of these local boards, municipal boards or executive, whom would you recommend as suitable?

A. Local boards and municipal committees should do it with necessary help from other quarters.

Mr. Kadri : You have said that in the case of extra-marital relations you would advise the age of 17. You know that till 18 one is a minor and not competent to enter into contract. In spite of that do you think that 17 is sufficient?

A. I have considered the point that 18 is the age of majority, but so far as her internal worldly affairs are concerned the delicate position of honour dawns upon a girl long before she is able to manage external things.

Q. Would you have flogging in the case of husbands also?

A. Most decidedly.

Q. If the boy is 16 years old and the girl is 15 years it will be a first offence and would you give flogging?

A. Flogging means 30 stripes at a time and also one stripe but it will add a world of good.

Q. Would you not give him benefit under Section 502, i.e., of first offender?

A. The case may be allowed to be compounded provided the penitence is real, genuine and sincere and where the eyes of the judge can see real penitence.

Mr. Bhargava : In regard to marital cases—in how many cases more than 5 years have been awarded within your experience?

A. Four years or five years have been awarded and of course there have been cases of only flogging. There have been very few cases of flogging and imprisonment.

Q. In those cases in which 5 years imprisonment and flogging has been administered was the girl generally less than 14?

A. There has been a case where the age of the girl was 18 and the man has been awarded 7 years.

Q. Were there any exceptional circumstances?

A. I could not tell you.

Q. When the girl is 16 or 18 years it may happen that the girl was consenting but she turned round and accused the man who raped her?

A. As a rule we find here that the girl has been actually raped and very often the accused is let off on bail and in the meantime the girl has been won over to say that she has not been raped.

Q. In such cases as these in which girls are won over do you not think compounding would be advisable?

A. I would not be a party to a man who has done a wrong and also to win over a witness, he should be allowed to compound a case.

Q. If a man is really penitent and there are chances of his marrying the girl, would you not think that compounding should be allowed in these cases?

A. At least I have not been able to see that there have been cases where the man would marry a girl. As a rule in 3/4ths of these cases they are of different castes, so the question of marriage is out of question.

Q. Are you in favour of diminishing the term of imprisonment from what it is now in the case of extra-marital offences when the age of the girl is more than 16 years?

A. I would retain this imprisonment because my experience is that transportation for life is not given. The girl is generally won over and the prosecution fails. The parents give way, the girl gives way, and people who are most interested in prosecution turn round.

Q. Were the cases between strangers or men of the same village?

A. One was a case in the same village but most of them were cases in the same locality. They were strangers but the girl and the parents of the girl agree to compounding.

Q. You have said that in regard to keeping of registers of births and deaths, Mamlatdar goes round and inspects these registers. Are these registers kept by Patels in the villages?

A. These are village records and it is a form under the Revenue Department.

Q. Am I to understand that these registers of births and deaths are kept under the Land Revenue Act?

A. No, these are some of the forms which are called village forms.

Q. Then is it the duty of the Patel to keep this register right or is it the duty of the parents to report these cases?

A. It is obligatory on the parents but they do not understand the obligation. People are scattered and Mahar goes round, collects information and reports.

Q. As regards these marital cases being made cognizable is it your view that unless there is an outside agency there are less chances of detection? In cases of this nature if a parent is out to bring a case it is generally such in which the circumstances are not ordinary and it is likely that he will pursue the matter. Why then do you think the cases should be cognizable and the law should be changed?

A. Human nature is such that very often it melts and pressure could be brought upon the father-in-law and the mother-in-law to change their minds and not pursue the action.

Q. When the parents of the girl or the witness, generally speaking, if they are won over, do you not realise that the case is bound to fail?

A. The police would take these people and get their statements recorded under section 164. Sometimes much water would have flown under the bridge, sometimes even one hour is too late.

Q. You make these cases cognisable by at least Sub-Inspector of Police.

A. Yes, and if he is away the Inspector will have to come and finish the enquiry or anybody of a higher rank.

Q. May I know how many Inspectors of Police there are in the Poona District?

A. 40 or 50. There is one District Superintendent of Police, several Assistant Superintendents of Police.

Q. There is another difficulty in a police chalan. The case in which the age of the girl is doubtful nobody would be responsible for bringing a false case.

A. I would rather make an error in bringing up a case than make a case of this kind go by default.

Q. So that in doubtful cases the police will be able to harass the public?

A. I do not think it is harassment, it is protecting the interests of the girl, and of the society.

Q. What is most important in cases of this nature is first the question of age and second the act itself. So far as complainant is concerned he can very well bring a copy from the birth register and the parent's knowledge of the age of the girl and the act itself can be deposed by the girl herself. Then what is the necessity that such a case should be enquired into by a police officer?

A. The surrounding things will have to be taken into consideration. Injuries on the body of a person, then the site and the close, the guilt and other marks on the close. Every particular case will have to be considered on its own particular circumstantial evidence.

Q. Then in cases where there are injuries and the age of the girl is below 12 you are in favour of its being made cognizable but when there is no injury and the girl is above 12 the case may be non-cognizable?

A. Even above 12 it will be cognizable because in a question of law people cannot collect evidence. It is necessary that it should be done by experienced and trained men.

Q. I see that it could only be done by competent officers. Would this apply to other non-cognizable cases?

A. You will have to double the posse of police. I do not think the legislature will be prepared to do that. I say there are so many cases which could be investigated by the police but where is the police and where is the money to come for the extra police.

Q. First of all you want a police enquiry under section 202, Criminal Procedure Code, and then commitment proceedings?

A. Section 202 has been suggested and I think that would be desirable.

Q. Am I to understand that a case in which there is complaint you want enquiry under section 202 to precede before a warrant is issued?

A. There will be no complaint; there will be charge sheet. Where a charge sheet is sent up the magistrate will satisfy himself.

Q. Where is the provision of the law by which a magistrate can hold enquiry under section 202 in cases charged by the police?

A. The magistrate has power to do it. That is not obligatory on the magistrate but he will say "before I issue process I have satisfied myself".

Q. As regards registration of marriage—you require the registration of marriage for proving the marriage itself?

A. It may serve two-fold object—proving the marriage and the age of the girl.

Mr. Mitra: It is admitted that there are very few cases within marital relations which come to court and it has been suggested that if the trial be held in camera and the punishment be confined to fine only unless there is physical violence, there are better chances of cases coming up to court. Do you agree with that?

A. Remote chances of cases coming to court.

Q. As regards the registration of births in villages is there any law penalising those who do not make a report?

A. That is dealt with by the revenue rules.

Mr. Mitra: Can you suggest any methods to make it more accurate?

A. As far as I know there is no tampering with and inaccuracy in the present records. There are chances of omission. Those chances of omission can only be tidied over by the village officers and the menial village servants doing their work more effectively. The Revenue Department, as far as I can see, is taking every precaution to make it more effective.

*Q.* From your wide experience as Public Prosecutor and your experience as a public man do you find that there is much of police harassment in these cases?

*A.* Here in this district the police will tell you a very sad story. People don't fear the police at all.

*Q.* Have you met a case of rape on a young girl of 12 in which there was police harassment?

*A.* No.

*Mr. Mudaliyar:* May I know what community you belong to?

*A.* I am an Indian Christian. My father was a Brahmin convert and my mother was a Marhatta convert.

*Q.* You suggest that the two offences should be treated as different offences. What exactly do you mean by this? Do you want a difference in nomenclature?

*A.* There ought to be a difference between the two. The person wronged is the woman in both cases. In one case the person who wrongs her is her husband and in the other case the person is an outsider. That is the only difference.

*Q.* What sort of separation do you want? Do you want that the marital offence should not be named as rape?

*A.* It is not by giving a different name but by differentiating them with regard to punishment, etc.

*Q.* In many of these cases when the boy is only 15 or 16 it is generally the parents of the two parties that bring about consummation.

*A.* As a rule, you are right that the parents are parties to this. But very often it happens that there is no parental control in the home and they are free to do as they like. Sometimes, which is very rare, the children act contrary to the wishes of the parents and consummation takes place at once.

*Q.* Leave aside these rare cases. Would you be in favour of a law which punishes the parents who bring about this result?

*A.* Of course the parents should be abettors under the law of abetment.

*Q.* Has there been any case of abetment of this offence?

*A.* No.

*Q.* Do you think that the law of abetment is realised by the police?

*A.* I think so.

*Q.* Have there been cases of girls of less than 12 where the police have taken cognizance?

*A.* I have not come across any case. But there have been cases of this kind. I would not say anything about such cases unless they have come to my personal notice. I have not met any cases.

*Q.* Do you think that the police are conscious of the fact that when a girl is less than 12 and the offence is committed they can book not merely the husband but also the parents?

*A.* I think the police would put the whole lot in the prison.

*Q.* Would you be content with the general law of Abetment?

*A.* You cannot make any improvement there. I think it is based on the principles of English law of abetment.

*Q.* In answer to question No. 19 you say that the question requires further elucidation. What safeguard would you suggest against collusion beyond the one that they should be cognizable?

*A.* There could be agencies working to bring these cases to light, such as social organizations and vigilance committees and bodies that look after the welfare of the society.

*Q.* Would you include this offence under offences referred to in section 44, Criminal Procedure Code, by which every person who comes to know of a case is legally liable to report.

*A.* I would favour it.

*Q.* You have suggested that whipping should be added to the punishment and you said that the family life would be happier. How would it be happier after flogging?

*A.* If you send the husband to jail and lodge him with criminals of a desperate character you will simply spoil him. The time that he spends, every day that he spends away from his home means that the estrangement between the wife and the husband becomes broader and broader. In the case of flogging he gets something instantaneously and he knows at that moment that he has done something wrong for which there has been punishment given to him immediately. That does not bring any separation between the husband and the wife. They live in the same house and of course with the back a little sorer for all these misdoings.

*Q.* May I take it that it is your idea that normally in marital cases only flogging should be administered?

*A.* As a rule flogging.

*Q.* Without imprisonment?

*A.* Yes. It has been done by the late District Judge. Very often he gives only flogging.

*Q.* Have you found that flogging has been deterrent enough? Have you not found that the offence is repeated over and over again even when flogging has been administered?

*A.* There have been cases where after flogging a man has come back. There have been at least 3 cases in the last 10 years where people have been flogged and they have been accused of theft again.

*Q.* You were suggesting that there is no reason to believe that the police has misbehaved in such cases. Have you come across any case where the defence has been raised that the police has been misbehaving?

*A.* That is a chorus which everybody sings. I look at it whether it is right that this defence of the accused should be given any value.

*Q.* I want to know whether this sort of defence has been recently raised.

*A.* Yes, it is said that the police have brought up hostile witnesses, tutored witnesses.

*Mrs. Nehru:* Do you consider the punishment provided in the case of marital offences deterrent enough?

*A.* I think the punishment now provided for is quite good.

*Q.* Can you tell why so far it has not created the mentality you are out to create?

*A.* This mentality as long as human nature exists cannot be created. People would continue till the millennium is reached. It is only an attempt to implant better ideas into the minds of the people. Some minds are more receptive than others and they are prevented from doing it while others would fly past it.

*Q.* What do you think is the best way of reforming people, fear, reformation or prevention?

*A.* There are some who are amenable to fear, there are some who are amenable to reason but few are amenable to reason and more are to fear.

*Q.* What in your opinion is the object of law, reformation or vindictiveness?

*A.* Law is never vindictive. It only wants to do justice between two parties. The wrong done to a person must be righted.

*Q.* In what way?

*A.* By giving punishment to the offender.

Q. If a wrong is done to a certain person and the offender is punished, in what way is the person against whom the wrong is committed righted.

A. He forms part of the society and the conscience of the society is shocked by that act, and in order that he may not repeat that offence the law steps in and punishes the offender.

Q. How is the man wronged righted?

A. If a fine is imposed the man says that he has got so much by way of compensation from the offender and in a case where property, for example, is stolen, it is restored. The man against whom a wrong is committed gets something.

Q. But in some cases the man does not get anything in return.

A. In some cases it is impossible to give anything in return.

Q. Is not this marital offence one of those cases.

A. Yes. The only object of making it penal is to reform and prevent such cases from occurring again.

Q. What is the best means of bringing it about?

A. Both legislation and social agitation.

Q. If we resort to legislation will a light punishment serve the purpose better or a deterrent punishment? If deterrent, why has it not served the purpose so far?

A. I still adhere to what I have said that a deterrent punishment is necessary.

Q. What are your reasons for that?

A. The reason is that if the legislature looks upon it as a small crime and thinks that one month's imprisonment or a hundred rupees fine is sufficient it will have no effect on the people.

Q. But why so far has it not created that mentality which you are out to create. You say as long as human beings are what they are it is impossible. Does not the law therefore defeat its own purpose?

A. In that case you will say roll up the Indian Penal Code. In spite of the Indian Penal Code the offences have been existing. Although it has not done all what is required, yet there are some people who are prevented while there are others who fly past the danger signal. There must be some remedy and therefore these laws are necessary.

Q. But do you realize that sometimes the very stringency of the law defeats its own purpose?

A. As far as these cases are concerned, I am sorry, I am not in agreement with that proposition. The reason is that if you treat this offence lightly you will treat the most sacred relations of life as if they were worth nothing.

Q. I think there could be nothing more sacred and therefore they should not be interfered with by outsiders.

A. Unfortunately they have to be.

Q. It is an anomaly. Nowhere in the world are marital relations governed by law. It is only in our country that it is so and perhaps even here after a few years it would be unnecessary. There could be no other occasion where the punishment should be as light as possible.

A. I wish I could be so optimistic. I don't want to bring in my own Christian beliefs. That would be entirely out of the sphere. The thing is that till that stage is reached men will go from bad to worse.

Q. You say the offence should be cognizable. Is there not a widespread feeling against the police in our country?

A. I can't say about other districts. Every offender looks upon the police with great dislike, aversion and fear. The offenders are not the persons to judge the best methods of tackling their feelings and they are not to influence us regarding the way in which we are to detect these offences.

Q. What have you to say where if even those who are not actual offenders, resent police interference?

A. I will say they are peeping merely through windows.

### Oral Evidence of Mr. K. S. JATAR, C.I.E., Poona.

(Poona, 2nd November 1928.)

Chairman : The present age of consent fixed by law is 13 within marriage and 14 outside marriage. Are you in favour of raising this age, retaining it as it is, or making it less?

A. I am in favour of increasing it.

Q. To what extent?

A. Sixteen for marital cases and 18 for extra-marital cases.

Q. Do you think that we should fix a higher age of consent or do you think we ought to legislate fixing a minimum age of marriage?

A. My opinion is that the age of marriage and the age of consent should be the same.

Q. Do you think we should have both laws or only the age of consent or the age of marriage?

A. I would have both laws. I want that the age of marriage and the age of consent should be fixed at the same limit.

Q. What would be the point in having the age of consent fixed if you have a law fixing the minimum age of marriage?

A. No point. I am against the age of consent being higher than the age of marriage.

Q. Do you admit that if there is a law fixing the age of marriage there is no need for the age of consent being fixed?

A. If the age of marriage is fixed at the proper limit, 16 for girls and 18 for boys, you may not require the age of consent law.

Q. If there is no marriage law?

A. The age of consent should be raised to 16.

Q. Do you think that this law of the age of consent standing as it does, at 13 has been effective?

A. No.

Q. Do you think it will be effective standing by itself if we raise the age to 15 or 16?

A. No.

Q. Do you hold that the law fixing the minimum age of marriage is more important of the two?

A. Yes.

Q. What, do you think, has contributed to the age of consent law being ineffective?

A. The practical difficulties in the way of administering the law. Every person is sympathetic towards the accused and there is no much chance of the case coming out.

Q. Do you think that the law is known about among the people?

A. Among the educated people it is known. Among the rural population I don't think it is known.

Q. Do you attribute the ineffectiveness of the present law to its being not made sufficiently public?

A. I don't think that is any important reason for its not being followed.

Q. Have you reason to believe that there are cases of the breach of the law?

A. There are very few among the educated classes. In other classes, I believe, there are.

Q. In what classes do such cases occur?

A. Backward classes in the villages, such as Kunbis and Sonars.

Q. Is there any particular class of people in Poona District who have this evil more than others or is it general?

A. I must tell you that I do not know the conditions of Poona District so well as I know of Berar. I can speak about Poona town of course.

Q. What are the conditions in Berar?

A. The people in rural tracts marry early and consummation also takes place early in their case.

Q. Do you find that the prejudice against post-puberty marriages is just the same as it was 10 years back?

A. It has considerably disappeared.

Q. Do you think that there is a large class of people who are constrained by social pressure to marry their girls before puberty although they would not like to do that?

A. I don't think there is any large class of that type.

Q. Are you aware of the orthodox opinion in Poona or in Berar?

A. I think, I am.

Q. Do you think that the law fixing the age of marriage at 16 for girls and 18 for boys would be tolerated?

A. I think it would be.

Q. Will there be no opposition?

A. No strong opposition.

Q. Have you any suggestions to make, if marriages are allowed at any age, as to how to prevent consummation upto 16?

A. It is very difficult. I think it is impracticable. If a young man marries a girl of 13 and you fix the age of consent at 16 say, it is most awkward and most difficult to check the couple from cohabitation. They associate together both publicly and privately and it is very difficult to prevent consummation of marriage. They associate with each other much more freely than was the case some years ago. I think it is almost impossible to ask a youngman to desist.

Q. After how many years' service did you retire as a Commissioner in Central Provinces?

A. After about 33 years service.

Q. During that time you moved among the districts and villages?

A. Yes, except during the last few years.

Q. You must have come in contact with many districts as a District Officer.

A. Yes. I came in contact with the district people a lot.

Q. Since your arrival in Poona have you had any occasion to gauge opinion outside Poona?

A. A number of friends come to me from Central Provinces and Berar.

Q. Since your arrival here are you connected with any social reform movements here?

A. Not directly.

Q. Do you know the ages of puberty among the various classes in Berar or in Poona?

A. It is between 13 and 15 years.

Q. You don't think there is much difference in Berar and things about here.

A. Perhaps the age in Berar is a bit earlier.



Q. You acted as a magistrate for many years, have you any suggestions to make with regard to the trial of these cases or with regard to punishment with a view to make the law more effective?

A. Perhaps if we refer these cases to a Panchayat first and then the court takes cognizance of them, that would make the law more effective.

Q. Do you mean a general panchayat or a caste panchayat?

A. A caste panchayat more or less. I mean a temporary panchayat to be appointed when a case arises.

Q. Who should appoint it?

A. The Collector would be the only man who would be able to do that.

Q. You mean, supposing a man is a Jain, the panchayat should be appointed from among the Jains.

A. I mean a local panchayat, not necessarily men of the same caste. If the panchayat says there is something in the case it should be tried.

Q. Do you think there is any need of changing the punishment?

A. In marital cases the punishment should be nominal.

Q. What do you mean by nominal? Do you mean heavy fine?

A. Yes.

Q. Have you any reason to think that the issue has in any way been prejudiced by marital and extra-marital cases being under the same section? Do some people object to marital offences being called rape?

A. I don't think so.

Q. Have you had many such cases to deal with as a magistrate?

A. I have committed a number of cases to the Sessions, but I don't remember any single case in which the question of age arose.

*Dr. Beadon* : Do you know of any cases referred to in Question No. 11?

A. I have heard of cases contemplated in that question.

Q. Can you give us some details about the cases you have heard of? When did it happen?

A. Many years ago.

Q. You don't know of any recent case.

A. No.

Q. Have you seen that there is any special deterioration of the girls or their children as a result of early maternity?

A. I think there is deterioration.

Q. Have you seen any cases in which you would attribute the deterioration definitely to early cohabitation?

A. I have seen cases that when a girl has reached a certain stature owing to early cohabitation deterioration has followed. The growth is stunted. What I mean is this. If there are two sisters born of the same parents and living under the same circumstances and if one is married at 12 and the other at 16 you will find a large difference in their growth and general physical condition.

Q. Have you seen any such case personally?

A. I know of a case personally. I have seen two or three cases.

Q. What about the children of these mothers? Have you noticed anything special?

A. They are not fully physically developed.

Q. Would you say that majority are not fully developed or only a few?

A. I won't say majority. I will say only a few. It will be very difficult to attribute deterioration to this cause alone.

Q. Do you think that this is a potent cause?

A. This is one of the important causes.

*Q.* You say Sonars marry very young girls and yet you say there is a great deal of prejudice against pre-puberty marriages. Why do they marry so soon?

*A.* It is partly due to custom. In pre-British period the girls never came out and they were married very early. This was in Mohammadan days. The girl was married when she was a child only and that custom continued.

*Q.* Do you think if the age is raised to 16 there will be great deal of immorality?

*A.* I don't think so. It will depend upon other social surroundings.

*Q.* Do you think it will be possible for these poor people to keep their girls long?

*A.* I don't think this will be the cause of immorality?

*Q.* Would you be in favour of registration of marriages, *i.e.*, all marriages being entered in a register with names and ages of the party?

*A.* There would be lot of difficulties in the administration of the law. People would be subjected to all sorts of troubles. It will mean some more interference on the part of the Patwari or the Talati.

*Q.* It is not really an interference, what interference would it be?

*A.* People are not inclined to go out of their way. Even in the case of births and deaths the records are never accurate. Many births and deaths are not reported. The village officials are not generally conscientious in their duties. Several cases of omission and mistakes have occurred.

*Q.* Even in municipal areas?

*A.* Even there it will depend upon the municipal staff. If the municipality is not working well the registration will be very defective.

*Q.* In Singapore they have got a system that a child when it enters the school must produce the birth certificate for the purpose of recording the age in the school register. Would this system be feasible here also?

*A.* I think it would be feasible. But the difficulties would be very great. The custom is that at the time of the child birth the lady generally goes to her parents' house. The report is made to the village officials of the place where the child is born. The child will start his education at the place where the husband of the girl lives. It will be difficult to trace the certificate if you insist upon its being produced at the time the child is admitted into the school.

*Q.* Would there be any difficulty if a duplicate copy is issued to the parents who report the birth?

*A.* They are all illiterate people and may find it difficult to keep it.

*Mrs. Nehru :* Is Goana ceremony prevalent here?

*A.* Yes, it is called Garbhadan ceremony.

*Q.* Does it take place long after the marriage?

*A.* It all depends. If the marriage takes place at a very early age it is postponed otherwise it takes place soon after. It takes place shortly after puberty.

*Q.* If consummation of marriage can be postponed till the Garbhadan ceremony takes place why is it not possible to postpone it till the girl attains the prescribed age, 16?

*A.* I only referred to the difficulty which will be experienced, within the two years if the age of consent is fixed at 16 and the age of marriage at 14, in keeping the young couple separate.

*Q.* What I mean is that if public opinion is strong against consummation before the girl attains puberty it should not be difficult to postpone consummation till the girl attained the age of 16.

A. I feel general public opinion does not count in this matter at all. It is the practical difficulty of the parents or those elderly persons who are in charge of the house where this couple lives.

*Mrs. Nehru* : Then you suggest that there is a general feeling of sympathy with the offender in cases under this act. Isn't it so?

A. Of course, there is sympathy for the offender because after all the offence is not considered as an offence by those who bring about this marriage. It is not considered so serious a matter and yet the feelings against this offence are growing.

Q. What I understand you to say is that although the feeling is growing, it is not strong enough to prevent actual cases.

A. Yes. The feelings are not strong enough.

Q. Do you favour the separation of the two offences?

A. Yes; I do.

Q. When you suggest that you want only fine as punishment, do you want it regardless of the age of the girl and the boy?

A. After 12 fine will do.

Q. What punishment will you have before 12?

A. The same punishment as at present exists under the present law.

Q. Then if you want the punishment to be the same before 12, this present law can as well stand as it is. Then why do you want to separate the two offences?

A. Because I am speaking of girls of 12 or 13 who attain puberty. In my opinion it may be lower in marital cases if you like. But generally the maximum punishment is hardly given by the Magistrate. It depends upon the individual case. I say that it will be a very great cruelty if punishment is so severe in cases before 12 and I don't contemplate any cases like that below 12 in marital cases.

Q. Have you ever come across a case like that either in your official capacity or in your private capacity where consummation of marriage has taken place at the age of 12?

A. No. I have not.

Q. Have you heard of any?

A. No.

Q. Have you heard of mothers at the age of 13½?

A. Yes. But the cases of mothers at the age of 13 or 13½ are very few latterly in the last ten years. Practically there are no cases.

Q. May I take it that you don't deny that there are cases taking place at present at 12 or 13?

A. There are a few cases.

Q. Then you cannot say you don't expect them.

A. But I am speaking of a case below 12.

Q. To whom should the right of complaint be given in marital cases?

A. It can be given to anybody—just as it is at present.

Q. But so far, has anybody taken advantage of this right of complaint?

A. I have already told that the law is not effective.

Q. For making the law effective if this power is given to Social Reform Associations, will it do?

A. As I said, this power can be given to anybody and that will do. But there are people even amongst the social reformers who go out of their way.

Q. What is your idea about instituting special societies apart from social reform associations to do this work for the purpose of making this law effective?

A. The Panchayats which I have referred to are just of the kind who will do other work also.

Q. This is for the villages. But don't you think something is required to be done in the towns?

A. We may have in towns and call them town panchayats.

Q. But that panchayat, you wanted to be instituted for each case separately.

A. It is suggested so long as the net work of the panchayat is not complete. But I find there are considerable difficulties. We cannot somehow or other for various reasons give effect to that law and so long as these panchayats are not started I suggest that for this purpose in places where there are no regular constituted panchayats, temporary panchayats should be appointed.

*Mr. Mudaliar* : You suggest that there is considerable sympathy with the accused in marital cases. Has it any reference to the age of the girl?

A. I talk of an ordinary case. I contemplate cases where the girl is above 12 and 13.

Q. May I put it to you that it is not considered a crime by society and sympathy will be with the accused provided the girl has attained puberty whatever may be her age. Is that what you mean?

A. Yes. There are only definite cases of this kind, of widows. I contemplate only those cases.

Q. Do you think that these unequal marriages are fairly common either here or elsewhere?

A. In the case of widowers they are fairly common.

Q. If that is the state of public feeling, do you think it would be of any good to raise the age of consent?

A. I have said that the age of marriage should be raised and the age of consent should be at the same time as the age of marriage.

Q. Don't you realise that the offence of consummation before a certain age is not looked upon as an offence?

A. Because of the marriage, it is not looked upon as an offence.

Q. If the state of feeling in the country is such that it tolerates consummation with a girl if she attains puberty, then public feeling is much less prepared to advance the age of marriage?

A. It is the sacredness of the marriage bond.

Q. And therefore to raise the age of marriage is doubly difficult because there is the question of sanctity and religious pressure for early marriage and secondly because of the absence of any public opinion against early consummation.

A. There is no religious pressure or sanctity for early marriage but that is the custom.

Q. But don't you think that there are communities in which pre-puberty marriage is considered to be essential? Amongst the Brahmans in Poona do they not hold this belief?

A. They don't believe in pre-puberty marriages.

Q. Do marriages take place amongst the higher classes before puberty or after puberty?

A. The marriages generally take place after puberty.

Q. In that case, do they not conceal the fact that the girl has attained the age of puberty?

A. The marriages are openly done with the knowledge of the fact that the girl has attained puberty.

Q. What is the average age of girls in these parts when marriages take place?

A. Fourteen.

Q. Don't you realise that in advancing the age to 16 the position would be more difficult at the present time?

A. I don't think so.

Q. Don't you realise that apart from religious sanctions or otherwise, the parents are more anxious to dispose of their girls in marriage early?

A. There is always this difficulty at a particular age.

Q. So the more she is grown up will not the anxiety be more?

A. Of course in those cases there is anxiety and that is to be borne.

Q. What is your idea about the temporary panchayats which you have suggested?

A. The panchayat can only recommend that the case may be compromised or the case may be proceeded with and the Magistrate will give orders.

Q. With the notorious fact that the sympathy is with the accused when he is in difficulties, do you realise that the panchayats will hardly make up their mind to recommend a trial?

A. The panchayat will consist of people who are not immediately concerned.

Q. Supposing the panchayat people are taken from the same community?

A. They are supposed to exercise better discretion.

Q. You were suggesting a fine after the age of 12 in marital cases. Who will pay this fine if the accused is below 18?

A. As I told you, I expect in such cases the accused may be below or above 18. My panchayat would recommend prosecution if the age is below 18.

Q. When you raise the age from 13 to 16, will there not be more cases in marital offences?

A. I believe the husband will always be more than 20.

Q. Still he may not be in a position to earn any income and then who will pay the fine?

A. His guardian will pay the fine.

Q. Supposing the guardian is not responsible for this offence, then who will pay?

A. He will pay or somebody will pay it.

Mr. Mitra: May I take it that you have experience of the villages in Poona?

A. I have experience only of Berar. Also my experience is confined to the city of Poona.

Q. Then you cannot say what the amount of opposition will be, if any, from the orthodox section in the villages, if the age is raised to 16.

A. I don't know anything about the villages. My idea is that there will be no opposition in Berar.

Q. In fact is there no religious notion in those parts about marriages taking place at a fixed period?

A. Not at all.

Q. It is an admitted fact that very few cases come to court in marital cases and there has been a suggestion that if the punishment is merely confined to fine and the cases are tried in camera and there is speedy trial and cases are made compoundable, then there is a chance of more cases coming to court. Do you agree to this?

A. I think that is quite correct. My idea of putting a fine is to educate public opinion, to let the public know that such and such a law stands and not to take a severe notice of the accused at all. As the law is a dead letter, people don't know it.

Q. In fact the deterrent nature of the sentence also stands in the way of bringing these cases to Court because you think there will be a permanent alienation among the husband and wife. Is it so?

A. Yes. There will be greater chances of these cases coming to court if the punishment is not deterrent, if the cases are tried in camera and if they are compounded.

Q. Is the registration of births in Berar and the villages working satisfactorily?

A. I don't think even in the municipal areas it is accurate.

Q. In the municipality is there any law penalizing non-reporting of these births?

A. Yes. There is the Municipal Act.

Q. I think there is nothing corresponding to it in the villages?

A. Yes there is. We never had occasion to enforce it. I am not quite sure what is being done at present.

Q. If there is a law and if it is strictly followed then is there the chance of maintaining the register accurate?

A. Yes. If it is vested in the hands of the officials, we cannot discharge this work satisfactorily.

Q. Is it the police official who registers the births?

A. The writer in the police office does this work.

Q. Is it not binding on the parents to report in proper time?

A. Yes: It is. But it is not supposed to be assigned on the parents but the village patel or headman is bound to report.

Q. You are for fixing the minimum age for marriage at 16.

A. Yes.

Q. What punishment would you prescribe for infringement of the law? Is it merely fine or fine and imprisonment?

A. In this case, you would not put it on the person married. It should be either on the priest or on the father of the girl, if the boy is not above 21 years.

Q. In other case, you suggest there may be fine and simple imprisonment or any of them.

A. Yes.

Q. In case we cannot have a marriage law, do you suggest that there should be any law prohibiting marriages say of men who are aged 45 marrying girls below 16?

A. I don't think it is practical to have such a legislation.

Q. As regards the marriage law you say there will be no opposition from the orthodox people. But will there be no opposition from these people for legislation against unequal marriages? Do you suggest any law?

A. If it can be made, it is good; but all over the world you find this.

Mr. Bhargava: I understand that you want that there should be a separation of the two offences—marital and extra-marital cases. May I know what is the underlying idea about punishing the offender who has got connection with a girl below a certain age? Is it on account of the injury that the offender has caused to the girl?

A. Yes. That is one reason.

Q. Supposing there is no injury, even then you think that the welfare of the girl requires such a provision and therefore such act against the person of the girl should be an offence. As at present section 376, Indian Penal Code, is applicable to all offences against the person. Now if this age is raised, the offence is the same. Only you raise the age which was lower previously but the nature of the offence is the same. Is it not so?

A. There will be very few cases of injury in those cases.

Q. If there is injury it is visible to the eyes so that ordinarily if the age is increased, there will be some difference in the nature of the crimes only for meeting out the punishment.

A. The nature of the crime would differ on the nature of the girl and the physical condition and that is in one case and there will be physical injury in the other case.

Q. So that there is no reason why should these crimes be grouped in different sections and different chapters?

A. I have said that the different sections should be for marital and non-marital relations.

Q. Do you want the punishment of imprisonment against the husband where there is an injury to the person?

A. I said a heavy fine would do.

Q. Do you mean to say that in many cases fine will be quite sufficient?

A. You may provide a little punishment. Six months will be preferable.

Q. Well, again you say that, so far as these cases are concerned, you appoint a panchayat who may decide the case. Is that what you say?

A. I have not said that the final power should be given to the panchayat. I mean for trial the present courts will do. The panchayat may recommend the future action of the case.

Q. Then do you mean to say that these panchayats would investigate the case?

A. Yes. They would enquire into the offence. They would do the work of the police under section 202, Criminal Procedure Code. In these cases the Magistrate should invariably refer these cases to a particular panchayat.

Q. Then before the Magistrate sends a case before a panchayat there must be a complaint before him. Who will make this complaint?

A. Anybody can make the complaint say a vigilance society.

Q. Do you want to restrict the power of complaint to the Magistrate and panchayats only and not to any person?

A. Any person may have the power of complaint.

Q. Do you think that the cases should be cognizable or non-cognizable?

A. All marital cases should be non-cognizable.

Q. Even if the girl is below 12.

A. Yes.

Q. Do you realise that the extra-marital cases are very much fewer than the marital cases?

A. Yes. There must be.

Q. So that the real evil which exists in the country is the existence of these marital cases.

A. But marital cases are of a different type.

Q. In your opinion when the panchayat is holding an investigation the accused will not be there.

A. The accused may or may not be there.

Q. How would the compounding come then?

A. Compounding may not come in every case.

Mr. Kadri: You say that if there is marriage law fixing 16 as the minimum age of marriage, no legislation raising the age of consent will be necessary. Will there be no anomaly if the present age of consent remains as 13?

A. There will be a corresponding increase, so that there will be no anomaly of that kind.

Q. You have given us a very interesting idea about the panchayats. But we are told by some witnesses that we cannot get the right sort of men to

serve on the panchayats. Do you think you will be able to get the right sort of men?

A. The system working at present is very bad. It has improved in some Districts in Central Provinces but I don't believe that these panchayats are quite all right in several places.

Q. What is the system of recruiting you would suggest for these panchayats.

A. The system of recruiting members to the panchayat will have to be left to the discretion of the Magistrates.

Q. In cases where there are regularly constituted panchayats in villages, might the Magistrate refer the cases to them?

A. Yes.

Q. You cannot suggest any system by which members can be elected, can you?

A. Yes. I have suggested that; but it is about temporary panchayats that I am speaking of, say, as in Panchnama.

Mr. Kanhiya Lal: Have you got any system of village panchayats in the Bombay Presidency?

A. Yes: There is. I don't know much about it.

Q. Is there any act which regulates the constitution and working of these panchayats?

A. Yes: There is.

Q. Supposing these panchayats are given powers of investigation and recommendation of the kind you propose, would that work better?

A. Certainly it would be better to give them regular powers under the Village Panchayats Act.

Q. You say that there is a great deal of sympathy with the accused amongst the people generally.

A. Not amongst the people generally but amongst those who are the near relations of the parties.

Q. Are the people generally apathetic or sympathetic towards the accused.

A. Yes: There is some sort of feeling for the accused.

Q. In the face of that feeling, do you hope that these panchayats will be able to work?

A. These panchayats will be constituted of persons who are not closely connected with the people. They will not be moved by the popular sympathy.

Q. You have suggested that these cases should be non-cognizable. Will it be easy to find out infringements of the law in that case?

A. I don't think.

Q. What difficulty do you see in making the case cognizable?

A. I don't like the idea of entrusting the case to a police official.

Q. Would you be satisfied if a provision is made that marital cases should not be investigated except by superior police officials like the Deputy Superintendent of Police or other gazetted officers of the police?

A. Well: From the Deputy Superintendent above I have no objection. Then I would make it cognizable.

Q. As a further safeguard, would you like to require that in all marital cases a preliminary enquiry should be made by the Magistrate before he sends a warrant or summons or notice to the accused to satisfy himself that it is a proper case?

A. I should ask the Magistrate to invariably consult the opinion of some respectable people living in the locality before he takes any steps.

Q. Would you like him to try the case with the aid of assessors.

A. Not necessarily.



Q. Would you prefer the system of trial with the aid of assessors to the system of trial by panchayats?

A. I have no special views about these cases apart from other offences. In addition to the panchayats if you have assessors I have no objection.

Q. Don't you think that there is danger of the evidence being suppressed or disappearing if the trials are delayed and the investigation is not carried on immediately?

A. You might fix a time limit for the submission of the report.

Q. Even if there is a time limit, the evidence might disappear in a day.

A. There is the man who is complaining and the chances of the evidence disappearing will be very few.

Q. After all there is a certain amount of sympathy among the local people and a general feeling that the husband's rights should not be interfered with. With these ideas is there no danger of the panchayats relaxing their efforts?

A. There is a little danger. But I don't think there is much difficulty. You have to educate the public mind.

Q. Would you prefer these cases to be tried by matrimonial courts consisting of a Magistrate and two non-officials to expedite or to avoid prolongation of the trials and to inspire better public confidence?

A. I have no objection to that sort of course.

Q. Would you prefer a matrimonial court to a panchayat?

A. My panchayat is recommended only with a view to get hold of these cases, that is to say, to give effect to the present law. My panchayats are to act as a sort of vigilance society to find out these cases and report to the proper authorities.

Q. You have said that the registration of marriages will cause considerable harassment. Do you think it is likely to cause more harassment than the registration of births and deaths?

A. Not more.

Q. Then why should we not adopt the system of registering marriages?

A. It is increasing the present difficulty. The police officials don't consider it to be their legitimate work.

Q. Supposing we give this power to the municipal boards or local boards which are now doing the work of registering births?

A. The agencies of local boards are much worse. Municipal Boards' agencies in some places are quite all right. But my experience of the local and District Boards is that they are quite hopeless.

Q. As an auxiliary both to marriage legislation and the legislation fixing the age of consent, don't you think that it will be helpful.

A. Of course the system of registration of marriages would be helpful.

Q. Would you have the executive authority to take up this work or the local and municipal boards?

A. According to the present administration, the authority should be given to the local boards and we have to put up with the inefficiency for a short time.

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Oral Evidence of K. B. Dr. KERSHAW D. KHAMBATTA, Health Officer, Poona City.

(Poona, 2nd November 1928.)

Dr. Beadon: You have given us a statement showing the number of deaths but not according to different castes. Would it be possible to get figures for different castes?

A. No. The Hindus include, Brahmins, depressed classes and Mahrattas. Mahrattas include all working class people. They are 5 times as many as the Brahmins.

Q. What is the system of registration of births and deaths here?

A. The registration of deaths is more correct here. Before the cremation ceremony is performed every death has to be registered there at the Burning ground. Registration of births is always incomplete. Some come here simply to give birth to a child and then go away and thus no record is kept.

Q. Do you have a column for the name of the child in the register?

A. No. It is said son of so and so. The name is always very vaguely given. Another difficulty is that vaccination is not compulsory in our town.

Q. Have you got a system of registration of marriages?

A. No. I should like that every marriage should be registered with the local self-government bodies.

Q. Who should report the marriage?

A. Guardians or parents of the bride might give that information.

Q. What would you gain by that?

A. That would tell us what was the age of the couple at the time of marriage, were they of a young age or were they fully grown up.

Q. Do you think there are marriages at a low age?

A. I think so.

Dr. Beadon : May I take it that you are in favour of penalizing marriages?

A. Yes.

Q. Would you penalize the parents of those who give the information?

A. If they give wrong information I would penalize.

Q. Other people have said that if we fix the age of marriage and have marriage registration, we will get simply misinformation and we will never get the correct age of the girl at all. How are we to know that a girl is of 17? Can you suggest any efficient means?

A. By an efficient system of registration of births the correct ages can be ascertained. As a matter of fact the births are not efficiently registered in every town. We have got that cry in our town that the births are not registered properly for many reasons and in other small towns too you will find that registration of births is always defective. If there is a registration of marriages at least some reliance can be placed. Of course everybody won't be telling a lie.

Q. Can you suggest any way by which we can improve the registration of births?

A. Compulsory it is; but the difficulties are that we cannot take any severe action against those persons who are not reporting.

Q. Don't you take severe action against those people who are not reporting births?

A. Yes: We do take but we cannot prosecute the whole lot. We do that but then we cannot force it in every instance. We find from the death register the birth of the child.

Q. Are most of the parents oblivious of registering births?

A. Yes: There are so many people, amongst the uneducated.

Q. May we ask you for how many years you have been the Health Officer?

A. I have been the Health Officer in Poona for 8 years and four months.

Chairman : Do you think that there is a large floating population in Poona either male workers or female workers?

A. There is a large labouring class that come and go. There are so many important works going on.

*Dr. Beadon :* Have you any death register according to various sects between various ages?

A. No. I am sorry I haven't got.

Q. Do you find tuberculosis here?

A. Yes. We have got.

Q. Do you find many women dying?

A. Yes. It is especially in the case of girls who are confined to their homes and amongst the purdah women and more so in Raviwar Peth and Shukrawar Peth where purdah is observed strictly.

Q. Do you consider that the early consummation is the cause of infant mortality and maternal mortality?

A. Yes: I do consider so. The infant mortality is due to early consummation of marriages which is one of the main causes.

Q. Why do you think so?

A. I find that the infants do not survive for more than 10 or 12 days after their birth.

*Mr. Kanhaiya Lal :* Have you a death register for males and females?

A. Yes.

Q. Are the ages shown there?

A. Yes: but these are not reliable.

Q. Is it obligatory to report deaths also?

A. Yes.

Q. And the age of the person dying?

A. We ask generally, but it is very difficult to rely on these people.

## Oral Evidence of Dr. RANKEN, Missionary Hospital, Poona.

(Poona, 2nd November 1928.)

*Dr. Beadon :* For how long have you been in charge of the St. Margaret's Missionary Hospital?

A. Nearly 15 years.

Q. Have you worked in any other part of India also?

A. Only here.

Q. Have you worked in villages also or only in towns?

A. Patients come to our hospital from villages also.

Q. You have all classes, Mohammedans as well as Hindus.

A. Yes.

Q. Have you come across any cases where there has been injury to the girl or her progeny on account of early cohabitation or any such cases as are contemplated in question No. 11?

A. It is very difficult to say. We had very few mishaps among young mothers. Very few young mothers have died in their confinement and very few had still births.

Q. Do you think that the young mothers suffer in any way as a result of early confinement? Does a young girl stand the labour as well as the older woman?

A. I think, as a rule, there is no special trouble due to early maternity. There is no trouble at the time of the first baby. Although the first confinement may be fairly simple the subsequent confinements are more difficult. If the mother is young there are still births often.

Q. Do you have young mothers below 16 or 17 here in Poona?

A. I think 15 is quite a common age for the first baby. I had an enquiry made about the ages of the mothers at the time of the first confinement in our hospital and I think the average would be 15. We have at present in our hospital girls who have become mothers at 13. I presume this to be the age. I have only judged from the time the first menstrual period began.

Q. Can they give the period when the first menstruation began?

A. Generally they do. They say menstruation began one year back or two years back.

Q. Have you found anything of interest as a result of the enquiry you made?

A. We have 52 women in our hospital, at present who have given birth to children, 13 were about 14 years of age at the time of the first childbirth, of these 8 have lost half or more than half of the children, one aged 14 at the time of the first birth, has lost 11 out of 12. Another of 14 had three full time children and they were all dead, 14 girls were 15 years old at the time of the first childbirth, 5 of those have no living child. The remainder have lost more than half of the children they have born. One has had 7 children and they are all alive. 10 girls were 16 at the time of the first birth. Of these 6 have lost more than half. One has had 5 and lost 4 and the rest have all the children. 3 were 17 at the time of first birth and two have all the children. 2 girls of 19 have all the children. One of 21 has had 3 and all are living. One of 22 has had 2 children and all are living.

Q. What class are these?

A. The one of 22 is a Mohammadan. The others are Mahrattas, Sonars and Brahmins.

Q. Were the Brahmin girls fairly well off?

A. Some are quite well off and some are very poor. We have had a very poor Brahmin girl. She was 14 at the time of the childbirth. Cæsarian operation had to be performed. She was very weak and had a sickly child. She is now suffering from White Leg.

Q. Is osteomalacia common here?

A. Yes.

Q. In what class of woman it is common?

A. It is more common in Purda women. The poor Mohammadans have less osteomalacia because they observe less purda.

Q. Is there some connection between hygienic conditions and this disease. It is not so much due to early marriages. Strict Purda more the cause than early maternity?

A. It seems so. It is common among the Bhoris. They are very strict in Purda.

Q. What about the age at which girls are generally married among the Bhoris? Do they marry very young?

A. They marry at about 14 or so. I don't think Bhoris have children very young.

Q. What age is osteomalacia more common, over 20 or under 20?

A. It begins very often at about 18 or 20. Very frequently it begins with the first pregnancy.

Q. Do you think that the large infant mortality is in any way connected with early consummation?

A. I think it is less now.

Q. Why is it less? Is it because of welfare centres or education of the mothers?

A. I really can't say. The statistics are very unreliable. The children born at some other place come here to die.

Q. What about the mothers? Do you think they suffer?

A. Many of them get old much before their time.

Q. What about the way in which they look after the babies?

A. They live in the hospital for about 10 days. We can't say how they keep their children afterwards.

Q. Have you met any cases in which there was a sort of mental trouble, mania or any other trouble?

A. We had some cases of that sort, but whether it is due to the mother being young or some other cause I can't say. We had a case of Marwari woman of 14. She had eclampsia. She was married to a very very old man. She left the hospital insane. The girl was sold.

Q. Do you think there is a great deal of selling of girls here?

A. No, I don't think so.

Q. Do you think that the women in this part favour early consummation or do you think they are unwilling to consummate marriage early?

A. I don't think they favour early consummation. I know when a mother brings a young girl to the hospital for her first childbirth she is generally very vexed about it. It is the case of a child giving birth to a child.

Q. Do you think there will be a great deal of opposition if the age of marriage is fixed at 14?

A. The difficulty in this country is that they marry fairly early. There is a danger of immorality. They have nothing to do at their homes. They are always idle and there is a danger of their going wrong.

Q. What, therefore, do you think, should be the age at which the girls should be married?

A. I think, 14. If, however, they are being educated the marriages should be postponed further still.

Q. Have you any medico-legal work also?

A. No.

Q. Do you think there is a great deal of difficulty in the estimation of the age of the girl?

A. Yes, there is.

Q. Can you make any suggestions as to how it can be removed?

A. It is possible to know how long since they reached puberty. That the mothers, as I have already said, can always say. That may help in finding out the age.

Q. What is generally the age of puberty here?

A. I think it is about 13.

Q. Do you know whether there is any difference in the age of puberty among different castes, Hindus or Mohammadans?

A. I don't think there is any difference.

Q. Do you think that consummation of marriage ever takes place before 13 also?

A. Not often. Pre-puberty consummation is really rare. I have not seen any such case. We had a case of an unmarried girl who had consummation before puberty. She suffered and is still suffering very badly.

Q. No marital case has come to you.

A. No. No consummation really takes place before 13.

Q. Is the law not broken?

A. I have not come across any case.

*Chairman* : What do you think, physiologically, is the safe age for motherhood?

A. It is very difficult to answer that question. Girls differ tremendously.

Q. As a rule, what will you say?

A. Not before 16. It varies with different girls. For the less physically fit it should be higher, 17 or 18.

Q. Sixteen is the least that you would put for safe motherhood.

A. Yes. Before that a girl is too young to have a child. I don't think motherhood before that would be safe.

*Dr. Beadon* : Supposing a girl mother starts motherhood before 16, do you think she is more at a disadvantage than a girl who starts motherhood say at 18 or any time after 17?

A. I think that girls who become mothers after 17 are physically better.

Q. Now there are several causes that contribute to the mortality of mothers. What percentage would you assign to early consummation and early motherhood? I mean below 16.

A. I cannot say what proportion it may bear definitely.

Q. What is the percentage of infant mortality?

A. I cannot also say that. Most of the babies who are born in our hospitals to young mothers are quite healthy. Of course later on the young mothers do not know how to look after the child.

Q. Have you occasion to watch them?

A. No.

Q. Have you found infant mortality high amongst poorer classes?

A. I think there is a great deal; the reason being that many of the mothers do not know how to nurse the children properly.

Q. Do you think that more children die amongst them than amongst the other classes?

A. I don't know.

Q. Is there a great deal of Infant Welfare Work done here?

A. I think there are centres here.

Q. Could you connect this Infant Welfare Work with the infant welfare mortality?

A. It has begun in Poona only three years ago and this period is not enough to show the results.

*Mr. Mudaliar* : What is Infantile Chlorosis? Do you find that amongst the children born of immature parents?

A. No.

Q. Do you find children of young mothers peculiarly liable to whooping cough?

A. No.

Q. You advocate marriage at the age of 14 because there is a danger to the morality of the girls. Are you speaking of your experience from Western Countries or of this Country?

A. Not of western countries.

Q. What is your reason for suggesting that there is danger for immorality?

A. Because the girls in this country are not educated. If they are educated and their minds occupied in reading, etc., and if they take plenty of exercise, then there will be less danger.

Q. Don't you think that while they might be educated on sexual question, they are at the same time educated on this point that it is absolutely

improper to have any sexual connection without the marital state? Don't you think that it impresses upon them more?

A. I can't tell you; because there is nothing to occupy their minds.

Q. But surely education is not the only palliative to occupy their minds. They have their household work. Have they not?

A. Yes.

Q. Have you had any knowledge of the sexual impulses actuating these girls?

A. I don't think I can answer that question.

Q. Are you aware that there are many communities with large populations amongst them who regularly marry their girls after 15 and 16?

A. I know that there are certain castes.

Q. Is there no education amongst these castes?

A. I don't know that. I know few people who are educated. [Mr. Mudaliar remarks that it is very strange to hear from a western woman to say that an Indian girl becomes immoral if she has no education.]

Mr. Mitra: Even in the interest of education, don't you think that the age should be fixed at a higher age?

A. If they are educated it is better.

Q. May I take it that your experience is not confined to the City of Poona?

A. Yes.

Q. From your experience can you tell us if the girls in India attain puberty earlier than in Europe?

A. I think it is a little earlier in east than in west.

Mr. Bhargava: Have you got experience in villages?

A. No.

Q. Do you know that the girls while they are unmarried do all business in the house?

A. I don't know.

Q. Have you come across any case of an unmarried girl going astray?

A. Yes.

Q. How many cases have you come across?

A. No. I can't tell you that. Not commonly.

Q. In what class have you heard?

A. I can't tell you in what class because I cannot remember.

Q. Can you say whether this girl was with or without occupation?

A. I say this girl was without occupation.

Q. Was she connected in any way with the prostitutes?

A. No. I can't say.

Q. Supposing a girl in a village is to do all the work the family does in the house, then will 16 do for safe maternity?

A. Sixteen will do.

Q. Supposing there is no immorality amongst the Indian girls for want of occupation, then you will advocate 16 as the marriageable age.

A. I stick to what I say, that you can educate the girl and keep her mind occupied. We are nurses and most of us are unmarried and we are quite safe.

Mr. Kanhaiya Lal: Would medical men and women like to report any cases of infringement of the law which may be brought to light?

A. I won't. I won't like to bring any girls to court.

Written Statement, dated the 15th August 1928, of Mr. A. K. ASUNDI, B.A., LL.B., Acting District and Sessions Judge, West Khandesh, Dhulia.

1. No. But with regard to the Age of Consent in connection with extra-marital offence of rape under sections 375, 376, Indian Penal Code, the general feeling is that it ought to be raised to 16 years. The consequences involved in such an offence and the moral degradation to which the girl exposes her families of birth and marriage cannot be supposed to be fully realised by the consenting girl before she is 16 years old. It is usually the plea of the defence in such cases that the girl consented; and cross examination is directed to show that the woman was not an unwilling party. Her tender age physical inability to resist, as well as her mental capacity to understand what the act would mean and possibly her unconscious yielding to the impulse of the moment may lead, in many cases, to absence of resistance which is very often sought to be interpreted as consent and it is felt quite necessary to provide against such loopholes for the delinquent to escape from the full consequences of his act.

As regards the Age of Consent in cases within marriage public opinion, for reasons given in my answers to question No. 7, is, except in the case of some ardent social reformers, against any raising of it further than the present limit.

2 (1) I am of opinion that the Age of Consent in marital offences should be retained as at present. My reasons are:—(i) There is scriptural injunction as detailed in my answer to query No. 7. (ii) Public opinion is against any interference in the domestic life of people who may be guided entirely by custom or their religious beliefs in their daily lives. It may be that private malice and vengeance have in the past been responsible for such rare cases as have occurred in regard to the offence committed by the husband, but otherwise the provisions of the Age of Consent Act have remained a dead letter. Social opinion has also advanced and people generally feel that the growing tendency to raise the marriageable age of girls may of itself obviate any necessity for legislation on the point. There is further general spread of medical knowledge and of rules of health which also to some extent helps in preventing any such offences. All these tend to show that public opinion ought to be respected.

(2) For reasons given in my answer to query No. 1, I have indicated the desirability of making an advance on the present law so far as the Age of Consent is concerned in offences committed by strangers.

3. Unfortunately yes in Karmatik, Khandesh, Poona and Thana Districts, so far as I know. The amendment of the law made in 1925 has not succeeded in preventing or even reducing cases of rape outside the marital state or the seduction of girls for immoral purposes. The raising of the Age of Consent in reference to offences committed by strangers to 16 years would, in my opinion, go to some extent in ameliorating the present unsatisfactory condition in regard to offences of rape. The law as to seduction of girls for immoral purposes would require such measures besides the raising of the Age of Consent, as greater stringency in penalising brothel house-keepers, procurers and other sorts of abettors. I would even suggest the penalising of persons letting their houses on hire knowing the immoral purpose for which they are to be used and such others consciously helping in the nefarious trade.

4. I do not believe that the raising of the Age of Consent within the marital state to 13 years by the amendment of law in 1925, has been in any way responsible for protecting married girls against cohabitation with husbands. I consider that public opinion has considerably advanced owing to reasons other than the amendment of law in raising the limit of marriageable age of girls beyond 13; and that in a great measure has helped to protect girls from untimely cohabitation. I may also add that the raising



of the marriageable age of girls in advanced classes is to a great extent due to the difficulty of finding suitable husbands and the economic conditions and the higher standard of living in these classes. The spread of medical knowledge and of rules of health has been helpful in advanced classes in putting off consummation of marriage wherever marriages have taken place before the desired age owing to custom, religious view or sentiment. In my humble opinion, stimulation of public opinion in this direction has been due not in any appreciable measure to the amendment of the law, but to the great spread of knowledge and education among the people. Among the backward classes, marriages even in infancy are not uncommon and I fear the unsatisfactory state of things is much the same as before.

5. Usually 13 years, in some cases 12. This age differs, in my opinion, in different classes of society. Among the higher classes owing to greater ease and luxury this age is lower than in the hardier classes, amongst whom it is usually 14 or 15.

6. (1) No.

(2) Yes, if the girl is otherwise in a satisfactory state of health.

(3) I have already said that in some cases girls attain puberty at the age of 12. In some such cases marriage may be consummated before the girl completes her 13th year.

Such cases rarely come to courts as I have come across only three cases in the District of Khandesh during the last 36 years.

7. Yes.

I append some authorities on the point which I have been able to collect.

8. Yes. Only among Brahmins. It is the same as consummation of marriage. Yes, usually within 16 days of the first menstrual period.

9. No. One or two years after attainment of puberty according to the health of the girl.

10. I have already indicated this in my answer to query No. 1.

11. In several cases of ill-health and deformity of young women opinion has been expressed that such state has been due to cohabitation before puberty or after it in undeveloped physical state of the girl.

Lameness or difficulty to walk, consumption, anæmia are commonly believed to be the results of such follies. But I have no personal experience of these matters and can give no details.

12. To some extent it is responsible though there are other factors contributing to the same unsatisfactory state such as :—

(1) present economic conditions leading to keener struggle for earning livelihood.

(2) absence of wholesome and nourishing food.

(3) overcrowding and other incidents of city life which lead to intemperate habits and unsatisfactory ways of life.

13. Public spirited men have been agitating for an improvement on the existing law in regard to the Age of Consent in extra-marital cases. I am not aware of any such agitation in regard to marital cases, though there may be expressions of opinion here and there regarding the desirability of extending the age limit in cases of offences committed by husbands.

14. Yes. Those guided by custom and religious sentiment in these matters do desire such early consummation.

15 and 16. Yes. The raising of the Age of Consent to 16 years in the case of strangers would obviate the difficulty. At or about the age of 15 the physical development in girls is well marked by certain indications and it would therefore be easy to say if she is below 15 or above it.

17. Yes. For the offence of rape by strangers the punishment prescribed is satisfactory and needs no change.

For offences in marital state the punishment need not be severe. I would prescribe only simple imprisonment with or without fine or fine only.

18. The difference in the procedure of trial for marital and extra-marital offences, at present maintained is, to my mind, sufficient and satisfactory.

19. I do not think that any more safeguards than at present available are needed.

20. From the foregoing answers it would appear that in my opinion legislation for fixing a higher Age of Consent for marital cases is neither needed nor desirable. Nor do I consider it necessary or proper that any enactment be passed for fixing the minimum age of marriage.

Public opinion so far as I understand it would be alike opposed to both such proposals.

21. I am of opinion that the latter part of the alternative is by far the better way of securing the object in view.

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**Oral Evidence of Mr. A. K. ASUNDI, B.A., LL.B., Acting District and Sessions Judge, West Khandesh, Dhulia.**

(Poona, 2nd November 1928.)

*Chairman:* You have been a Sessions Judge?

A. Yes, for the last 5 months. I was Sub-Judge for 19 years and I am Additional Sessions Judge in the Kanara District for the last 1½ years.

Q. Do you think your opinion is typical of the whole of the Kanara District?

A. It is the opinion of a more orthodox type of Kanarese.

Q. Do orthodox people form more than 80 per cent. of the population?

A. There are different communities but most of the people are orthodox.

Q. This is not the opinion of Lingayats or Jains?

A. No; it is the opinion of Brahmanas.

Q. It is the typical opinion of orthodox Brahmanas?

A. Yes. I myself belong to a village and have information of village life. I can speak of Lingayats.

Q. What is the Brahman population of the whole of Karnatak?

A. I cannot give the proportion but I think it is very small.

Q. Is it 5 per cent. of the whole Brahman population?

A. 80 per cent. of the people are non-Brahmanas. Brahman community is a small one. I can speak of the Madhwa community. I sent a copy of this to His Holiness of Udipi Math. I have got a reply from my friend that he approves of this.

Q. Apparently you want the extra-marital age at 16?

A. Yes, I will have no objection if it is raised even to 20.

Q. Supposing it is 20 all the girls over 20 will be without protection?

A. They do not need any protection.

Q. Is it permissible for a man to take another man's daughter if she may be 21?

A. No, but they do not need protection.

Q. Up to what age would you make it an offence in the case of girls?

A. After 16 I believe she would be capable of giving consent.

Q. You think there is no sin after 16?

A. It is a sin.

Q. How do you cover that?

A. I cannot suggest anything now.

Q. You do not want any legislation either by way of Age of Consent or penalising marriages up to a certain given age?

A. No.

Q. Would you advise us to recommend the abolition of the existing law of 12 and 13?

A. My view is that it has been a dead letter.

Q. But why should you keep a dead letter? When you do not want interference by a law, you say it is the undisputed right of the husband to have his wife at any age?

A. One necessary condition is that she should have attained puberty.

Q. But your position is that nobody has a right to interfere in religion by legislation?

A. According to religious injunction there is no interference until she has attained puberty.

Q. Supposing a girl attains puberty at 11?

A. After puberty if the Shastras say there can be cohabitation I would stick to it, but puberty generally comes after 12.

Q. In some cases it takes place at 13?

A. In a few cases, so at present if the law is 13 it does not materially affect.

Q. We are told that there are about 65 per cent. cases in which girls attain puberty between 12 and 13. Would you abolish the law or would you substitute a law of puberty?

A. Yes. Puberty is the word given in the Shastras and it must be given effect to.

Q. Do you know of the age that is enjoined for a man to marry?

A. I think it is 24 and 30. A man of 24 may marry a girl of 8 and a man of 30 may marry a girl of 12.

Q. Even among the Madhwas there are a large number of marriages below 24?

A. Yes.

Q. Don't you think that is also a violation of the Smṛiti?

A. It is.

Q. Is it punished by the Madhwacharya?

A. No penalty has been imposed for that because it is expected that a boy will be in Gurukul for 12 years.

Q. Can you tell us of any authority which says that at the first appearance of menses cohabitation must take place? First *Ritu* is as good as any other *Ritu*? Menses comes every month, you do not mean that *garbhadan* should take place every month.

A. If there is to be cohabitation it is only at the time of menses. Barring *Ritu*, cohabitation is prohibited.

Q. Going to women at that time only is allowed?

A. It is prohibited at other times.

Q. The *prayaschit* for this is said to be 100 *pranayams*. If so, it is a smaller sin, because the smaller the sin, the smaller the *prayaschit*?

A. But it is a sin after all.

Q. This sin can be expiated whether it is intentional or unintentional and therefore the inference is that it is not a big sin and when *prayaschit* is done the offence is expiated.

A. It is a sin, may be small, and it should be avoided.

Mr. Kanhaiya Lal: Under the Hindu Law a man is liable to pay three debts, one of which is payable to the Pitris or ancestors.

A. Yes.

Q. Is it the object of the injunction requiring the husband to approach his wife during menses that he should try to wipe out the debt due to the Pitris by producing offspring?

A. That is the object of Garbhadan, and Prayashchitta would be necessary for the purpose of expiating its omission.

Q. Is the approach to the wife during the menstrual period recommended because it will help in wiping out the debt by the production of offspring?

A. It may be said so.

Q. Can it be regarded as anything more than a recommendation suggesting the method for paying off the above debt?

A. Besides being a mode of repaying the *Pitri Rina* it is a mode for satisfying the demands of nature.

Q. Can it be regarded as a mandate for all persons alike?

A. This is suggested only for an Aputra or a person who has no male issue.

Q. You say that for a man who has offspring there is no obligation to approach his wife during the menstrual period.

A. That is what Kulluk Bhatta says in his commentary on Manu.

Q. Do you call it a *Niyam* or a *Vidhi*?

A. All the 16 Sanskars are *Vidhis*. After one issue is born he should not approach his wife. But the main object is to preserve Brahmacharya as far as possible, i.e., excepting for the purpose of having issue.

Q. It is laid down in the same commentary that while a man should approach his wife during menses, he should not approach another man's wife and that he should approach his wife even outside the menstrual period in order to satisfy her desire. Would you call all this mandatory?

A. No, it cannot be.

Q. Are any penalties laid down for a man who does not approach his wife during menses?

A. In Manu no penalties are mentioned.

Q. Has it been laid down by Vashishta among the duties of a *Snatik*, that he should not climb a tree, ascend a well or eat with his wife and is it also said that he should approach his wife even outside the menstrual period to satisfy her desire in fulfilment of a boon? If all these directions occur together would they not fall under the same category and be regarded as of no greater religious value than mere recommendations?

A. I can't say.

Q. You recommend that the Age of Consent should be fixed at 13 for marital cases. Are you aware that Sushrut the great Ayurvedic authority says that a girl is not fit for child-birth till 16 and that if a child is born before that, it will not be long-lived, or may die in the womb. Would you not consider that in view of that recommendation it is undesirable that consummation should be allowed before the girl is likely to be fit for child-bearing?

A. It is undesirable.

Q. Do you recognise also that there is a gradual and growing physical degeneration of the children in this country?

A. Yes. I have referred to it in my statement also.

Q. Is it not desirable in the public interest that steps should be taken to check that evil?

A. As the age has been gradually rising itself without the aid of any legislation I don't know why in our household matters, or our domestic matters legislation should be allowed to interfere.

A. I can't say.

Q. Would it not accelerate progress if such legislation is enacted?

A. So far as my own experience goes, I can say that during the last 25 years the age has risen from 9 to 12. 25 years back there used to be so many marriages of Brahmin girls of 9 or 10. Now marriages usually take place not before 12.

Q. Do you recognise that there is a large amount of infant mortality in India. A large percentage of mothers also die on account of various kinds of illness after child-birth. Are these not cases which require some immediate remedy?

A. They do.

Q. Can you suggest any remedy other than postponing the consummation of marriage?

A. My view in this matter is that it is more due to other causes, or other circumstances, which I have mentioned in answer to question No. 12. It is more due to economic considerations. I will make a distinction between the higher and the lower classes here. Among the lower classes I think it is actually the economic conditions which lead to this sort of early development of sexual faculties. Workers in mills who have not good moral surroundings are very likely to get themselves deteriorated on that account.

Q. But it is one of the causes.

A. I say, to some extent it is responsible. To my mind a great extent of this evil is due to conditions in cities. Particularly in the case of people who belong to higher circles even if marriages are postponed till a later date they are found to have bad health owing to the conditions in cities.

Q. Do you think if we fix the age at 16 it would be a sufficient protection to the girl?

A. I think so.

Q. Have you come across any cases in which serious injuries have been caused to the girls where the marriage has been consummated at 13 or 14?

A. I believe one such case was decided by Khau Bahadur Kadri himself. A girl of less than 12 was raped in that case. That was a case in which there was some strife between the husbands and the wife's people, and that led to the offence being brought to Court.

Q. Have you come across cases where a girl of 13 or 14 has received similar injury.

A. No.

Q. If evidence is produced showing that in such cases girls and their progeny suffer would you recommend an advance in the age?

A. I can't say.

Q. Would you make the offence cognizable or non-cognizable?

A. It should be cognizable.

Q. Would you require as a safeguard that these marital cases should be enquired into by a gazetted police officer like the Deputy Superintendent of Police?

A. I am satisfied if it is done, as is now done, by the Inspector of Police.

Q. Would you be in favour of magistrates being required to make a preliminary enquiry in order to eliminate malacious prosecutions before issuing summons or notices?

A. That would be a safeguard.

Q. At present cases under 12 go to the Sessions and cases above that age go to Magistrates. Would you be in favour of having a Matrimonial Court to try all these cases consisting of a Magistrate and one or two non-officials and would that inspire greater public confidence and also expedite the disposal of the cases?

A. It would be a new institution and whether it would inspire greater confidence than the Bessans Court to which they are now committed, I can't say.

Q. Would not the association of two non-officials with the Magistrate ensure larger confidence?

A. It would.

Q. Would you make the offence compoundable?

A. I would make it compoundable with the sanction of the Court.

Q. If you have marriage legislation as well as legislation fixing the Age of Consent, would you like to have a system of registration of marriages, giving the names of the marrying parties and their ages and other particulars?

A. There would be no objection to that.

Mr. Kadri: Do I take it that you are opposed to any minimum age of marriage being fixed or the Age of Consent being raised merely on religious grounds?

A. Yes, it is only on account of religious considerations.

Q. But the Age of Consent law has been on the statute book for so long, why has there not been any agitation against it?

A. But it has been a dead letter. There has been no occasion for agitation. If the age is further increased, I should think there would be agitation.

Q. Do you think the agitation would be such as to warrant our holding back our hands?

A. I can't say.

Q. As a public man would you not think apart from religion that it is necessary that for the safety of the girls the age should be raised to 14?

A. Yes, subject to the first exception.

Q. Have you got any experience of the system of birth registration in vogue here? Is it compulsory?

A. No, it is not. We do not get proper registers even for the purposes of evidence, even in Municipal towns sometimes, although under the Municipal Act the registration of births is compulsory and there is some fine attached to failure to report. But the registers are most unsatisfactorily kept.

Q. We have been told that after 6 months there is vaccination and any unreported cases are detected.

A. That has not been my experience.

Q. What is the condition in rural areas?

A. In rural areas it is still worse. I don't think the register gives all the necessary information, and it is likely that sometimes births are ignored.

Q. There is no legal obligation on the parents to report births. Is it not so?

A. I don't think so.

Mr. Bhargava: Would you like that an obligation may be placed on parents in rural areas so as to secure accuracy of these registers?

A. May be.

Q. So far as these electric injunctions are concerned does any person really perform Prayashchitta if there is a breach?

A. I have not known of any such case.

Q. Do you think if a man of 24 cohabits with a girl of 8 it would not result in the death of the girl?

A. Certainly, it would result in serious injury. But that never means consummation. That only means marriage.

Q. Are there any widow remarriages in your part?

A. They are not allowed.

Q. Are there any widows?

A. There are.

Q. Can you quote shastric injunction saying that there should be no consummation before puberty?

A. I can quote the injunction saying that consummation should take place after puberty.

Q. You say that a girl usually attains maturity at 13 and you say one or two years should elapse before consummation takes place. I understand from this that you would be satisfied if the marriageable age for the girl is fixed at 15 or 16.

A. At 15 or 16.

Q. There is no shastric injunction about consummation excepting that with regard to supposed interpretation of first menses, and supposing that authority is not found out, as you have not been able to find it out, would you like that 16 be fixed as the age of consummation?

A. I would.

Q. In reply to question No. 2 you say, social opinion has also advanced and people generally feel that the growing tendency to raise the marriageable age of girls may of itself obviate any necessity for legislation on the point. I understand you favour the raising of the age in any way except legislation.

A. Yes.

Q. But if the Shastras enjoin, according to you, that there should be consummation at the first signs of menstruation would you not be going against the Shastras?

A. I would be.

Q. Do you think that Shastras are as much a dead letter as this new amendment has been?

A. In that way I should say Shastras have always been a dead letter.

Q. You have said that lameness or difficulty to walk, consumption, anæmia are commonly believed to be due to pre-puberty consummation.

A. Yes, it is believed to be so. I have no personal experience.

Q. Is that belief correct?

A. That is more for a medical witness to say.

Q. You say in reply to Question No. 17, that punishment for marital offences need not be severe. I would prescribe only simple imprisonment with or without fine or fine only. You refer to this punishment when the girl is above 12.

A. Yes.

Q. You said that you would be in favour of a preliminary enquiry in such cases. May I take it that you are in favour of the enquiry in cases in which there is no *chalan* by the police?

A. I want this preliminary enquiry by the Magistrate himself when the complaint is made.

### Written Statement of Mr. N. J. SHAIKH, B.A., LL.B., Assistant Sessions Judge, Dharwar.

1. There is no dissatisfaction as to the law now in force as regards the Age of Consent. On the other hand there is a strong movement by the educated classes to have the age increased.

2. In Section 375 among descriptions in fifthly it ought to be 18 instead of 14 and in exception instead of 13 it ought to be 15. Looking to peculiar conditions in this country I am firmly of opinion that a girl even of the

age of 16 is not able to give an intelligent consent fully realizing the responsibilities of her action. Moreover this raising of age would go a great way in putting a check on immature prostitution.

Medical Jurists have been of opinion that a girl attains puberty in this country at the age of 14 and a girl could not be considered to be fit for sexual intercourse unless she had some time for physical development attaining full strength for bearing the burden. Under the circumstances 15 will be just the minimum age at which a girl may enter into marital obligations.

3. Not that I know of.

4. Not possible to answer this question as the parties stand in such relations of confidence that it is practically impossible to get any complaints in this direction. But surely a penal enactment of this nature must act as a deterrent.

By this enactment, there has been a great awakening in the lower classes of Hindus and the girls are not sent to the husbands' houses before the specified age, and it must be acting as a preventive to early consummation. The advanced amongst the Hindu classes have been taking pains by educating public opinion in this direction as a result of which there is some, if not very, appreciable decrees in very early sending girls to their husbands' places.

5. (a) Girls usually attain puberty after 14.

(b) I should think it does not vary generally in different communities or castes.

6. I do not think cohabitation is common before 13 nor before puberty. I have not seen any such cases coming to Court.

7. Amongst Mussalmans there is no Quranic injunction on the point.

8. Have no knowledge about it.

9. I should not think attaining puberty to be a sufficient indication of physical maturity that would justify cohabitation.

I think no harm will ensue in case consummation is effected after a girl attains the age of 16.

10. Eighteen.

11. Not able to answer.

12. Do.

13. After the passing of the amendment in 1925 in Gujarat there has been a general awakening and the cry has been to yet raise the existing minimum. The awakening has been generally in advanced Hindus.

14. Have no idea.

15. It is always very difficult for Expert Medical Evidence to give a correct estimate of age, but, I should believe, the various ingredients that go to approximately determine age show that it would be easier to find out whether a person is above 14 than below that age.

16. I should not think it would make much difference between 13 and 14, but, surely it would make a world of difference if it would be 15.

17. Yes. In case of marital 2 years and fine.

In other cases transportation or 10 years' rigorous imprisonment and fine.

18. The procedure as it is, is quite appropriate.

19. The present safeguards are quite sufficient.

20. I should think penal Legislation would be more effective. I think this mode though drastic would conduce to the betterment of Society, and, future generation of the country.

21. Social reform and progress in education would be more desirable but, considering the great ignorance of the people and the deep rooted prejudice against any reform a penal Enactment would serve purpose better.



**Oral Evidence of Mr. N. J. SHAIKH, Assistant Sessions Judge,  
Dharwar.**

(Poona, 2nd November 1928.)

*Chairman:* Are you the Assistant Sessions Judge in Dharwar?

A. Yes.

Q. How long have you been there?

A. For over a year.

Q. There is only one thing which I want to elucidate in answer to Question 20. You have stated in your answer to Question 20, that you should think penal legislation would be more effective. We want to know which you choose or you want both.

A. The latter course will be more desirable, viz., fixing the minimum age of marriage.

Q. You mean the age of marriage to be fixed at a particular age. What would you fix at?

A. Anything above 15.

Q. And for boys?

A. Not less than 18 at least.

Q. Would you fix any age for the Age of Consent for non-marital purposes?

A. I would put it to 18 or 20. I could never believe that a girl is capable of giving an intelligent consent at less than 18 wherever it was alleged by the defence that the girl had consented. For instance I had a case. She was quite a girl and that particular case I sent to the Civil Surgeon himself and on examination he found that she might be 13 or 15 and all the circumstances led me to believe that even granting that the girl had given her consent, it was perfectly impossible to believe that she realised the consequences of the act. In the circumstances, a girl below 18 is not capable of giving an intelligent consent. I would therefore put it at 18.

Q. And in intra-marital cases?

A. Of course this is a hot country and probably girls attain puberty at 13. According to medical opinion, it is believed that a couple of years would be more reasonable.

Q. Could you place the same age?

A. Yes. Above 15. Looking to the present conditions of the country I would prefer that.

*Dr. Beadon:* In answer to Question 12, you have put "Do" What does "Do" convey?

A. I mean "I am not able to answer".

*Mrs. Nehru:* Have you found from your experience whether the working of the act so far has acted as a deterrent?

A. I know about two cases only in which it has acted.

Q. Can you mention some of the facts about those two cases you have referred to?

A. There was a case nine months ago about a girl below 13 at Dharwar. The husband approached the District Court in the capacity of a guardian and subsequently we found that the husband took her forcibly to his house because she lost her parents and she was under the mercy of her relations. She had some property.

Q. Was she a Hindu girl?

A. Yes.

Q. About the second case?

A. The husband was an adult, over 30, and on account of the bad relationship between the girl's people, and the husband's people, it was complained and of course the husband was severely dealt with.

Q. In that case it does not show that the act worked as a deterrent. It shows that the case was brought after the act was done. Is it not?

A. That was only because the relations between the husband's people and the girl's were strained; otherwise they would not come up before the Court.

Q. Exactly, it does not show that it has acted as a deterrent.

A. You admit that the ignorance of the people is colossal. They generally don't know whether there is a law or some such thing exists. All that they understand is that because the girl is young and therefore such a thing is done and so a sort of horror is created in their mind. You will admit that the ignorance on our part is colossal. You have very few literate people.

Q. Then am I to conclude that in the Karnatak district where you are posted now, the people hardly know anything about this law?

A. Of course the Gujrati educated people have worked a lot in educating public opinion. In this part, these people don't know much about it.

Q. Do you mean to say that the news of the case goes about the villages and acts as a deterrent through the newspapers?

A. Yes.

Q. You say that the advanced amongst the Hindu classes have been educating public opinion in this direction as a result of which there is an appreciable decrease in sending girls early to their husbands' places. At what age the girls are now sent to their husbands?

A. Amongst these people they hardly send before 15. And the Kaduwat and Kunbis particularly in our part go much earlier. The age is 13 amongst these people.

Q. Is there any difference in the ages amongst towns' people and the village cultivating classes?

A. Of course they take away the girl but I don't think there is consummation before a particular age. In taking away the girl she lives in the husband's family and generally it is the custom and the boy stays with his maternal people.

Q. Amongst whom this custom is prevailing?

A. Not amongst the Hindus. I was talking of Gujratis. Generally it is considered to be an honour to bring the nephew.

Q. So that in that way the husband and wife are kept apart?

A. Yes. The husband is at that place and the girl is here and amongst the educated classes the boys are sent to colleges to study.

Q. Do you think there will be any opposition amongst the Mahommedans on the grounds of religion if we adopt your suggestion, viz., the fixing the minimum age of marriage?

A. I know of religion. We have hardly anything as regards maximum age. The Quran, to my knowledge, is quite silent on that point but the Haddis and other books say "don't allow your daughter to grow up to such an old age that she might be a shame to you". Then there is another book which goes to show that if a girl has attained her puberty it is advisable to send her over but if the other signs are not visible then allow her to grow up till 15 and then it is obligatory on the parents to see to her disposal.

Q. Will they not consider this as an undue interference?

A. I don't think we have early marriages. The mussalmans haven't got early marriages except for the Sunni Boras and Ghanchees.

Q. Is there any religious injunction on this point?

A. To my knowledge I don't pretend to be a very great authority on that particular point. I don't think there is hardly any religious injunction.

Q. In para. 17 you have suggested two years and fine in marital cases

A. I mean two years or fine.

Q. Would you like to make it cognizable?

A. No; because you have just got to look to the future of the girl.

Q. Who should complain?

A. The parents of the girl or the relations should complain. As a matter of fact there are very few cases which come to Court.

Q. Would you devise any means for more cases coming to Court?

A. I would like to avoid Courts as far as possible. We have got to put a good penal legislation for the good of the country otherwise I would personally like to see that these things are done by social reform and progress in education.

Q. In that case you would only have a nominal law as it has been so far?

A. Yes.

Q. And with the spread of education you are quite sure that the evil will go?

A. Yes.

Q. Do you think the speed with which this is going, is enough to protect the race from deterioration?

A. Yes. We have been making rapid strides during the last ten years and if we go on at this rate for another ten years, I don't think we will very much need legislation.

Mr. Mitra: Are you speaking, perhaps, of the Bombay Presidency when you expected that there will be not much opposition from the Mahomedans?

A. Yes. As regards the Bombay Presidency here I occupy a very good position in society and am connected with most of the associations and societies who are working for the social uplift throughout Gujrat.

Q. Will you take it from me that in Bengal, there is a considerable feeling amongst the orthodox section of the Mahomedans and their argument is that Quran doesn't say anything about marriages and if by law you restrict you will be really restricting the Mahomedans in their freedom of action?

A. That is their argument.

Q. If you cannot have a marriage law, will it be easier to get laws about Consent?

A. Personally I should think there should be less objection as regards the marriage law. And then a State has got to look to this because it is for the greatest benefit of the country. There might be sentimental objections hither and thither but as long as you don't rigidly interfere with the precepts of the religion, I don't see any reason why there should be any objection. I don't think this law would at least, according to my opinion, interfere with the religion. Of course I tried to look at the texts and as far as I can gather, there is hardly any injunction which we can call "a religious injunction on the point."

Mr. Bhargava: In Gujarat I understand about 80 per cent. of the marriages take place at an early age. Is that so?

A. Yes; it is so amongst the villages. In the cities however the age of marriage has advanced.

Q. Still are you of opinion that there will be no dissatisfaction?

A. No; I do not think there will be any dissatisfaction. Even the people in the villages are now advancing.

Q. You want to raise the Age of Consent to 15 or 16. Do you think that there will be a large number of cases coming to Courts?

A. I should think the less these cases come to Courts the better for the parties concerned.

Q. Do you think that even if the age is increased, there will be very few cases?

A. Yes; on account of the intimate relationship of the parties.

Q. Do you think that the obligation should be laid upon everybody to report cases as soon as they become aware of the offence?

A. I do not think that would conduce to the smooth working of the law, because thereby you would be giving power to certain unscrupulous people.

Q. Supposing this power is again circumscribed by another provision that you make it obligatory upon some authority to single out such cases of which examples ought to be made, will it be effective?

A. You already bring one party into trouble whether rightly or wrongly, and then you create another agency to enquire into the fitness of the case.

Q. As soon as the report is made one party has done its work. This authority whom I suggest would look at the report in an impartial manner and find out whether it is a fit case or not. If the case is serious enough, he will single out the case, and the Court will then order an enquiry.

A. Why not have recourse to the direct way? I would prefer that there should be no undue interference in such matters.

Q. What I propose is just to minimise the interference. What do you think of the system of sanctions before prosecutions are launched against people?

A. Do you mean to say that the present system of sanctions by themselves are really an approved matter?

Q. The question is one of choosing between two evils. And in the system of sanction there is less trouble.

A. Let the aggrieved party go to the Court on his own initiative.

Q. Then the difficulty is that if you restrict the right to girls and parents there is a likelihood of cases not coming to light at all.

A. I would rather wish that it should be so than that the right should be given to other people. Supposing I have got a little influence with the sanction-giving authority I would go and complain if I am not in good terms with the parties; Also as long as there is no compulsory registration of births it is very difficult to know the age. And in villages you cannot have it. And there are people like the Gypsies and Fakirs about whom you cannot get any information at all.

Q. Then you are for an accurate reistration of births.

A. Yes.

Q. If there is accurate registration of births, then in all likelihood the cases that would come to light would be cases of maternity before the prescribed age, or cases in which there has been serious injury which it is impossible to conceal. Otherwise generally speaking cases will not come to Courts, and the law will remain a dead letter as it is now.

A. I would rather have it as it is than expose the parties to danger.

Q. You say that girls usually attain puberty after 14. You also say that at least two years should elapse after puberty for consummation to take place. Would you therefore be satisfied if 16 is fixed as the Age of Consent within marital relations?

A. Yes; 16 will be all right.

Mr. Kanhaiya Lal: Do you want that the marital cases should be non-cognisable?

A. Yes.

Q. Would you be satisfied if in marital cases we require that the case should be enquired into by a gazetted officer of the police not below the rank of a Circle Inspector or Deputy Superintendent?

A. I would prefer a direct complaint to the Magistrate. The Magistrate will deal with it as a non-cognisable case.

Q. As the law is at present there is not much likelihood of the father or girl complaining; and other people will not get information. So in order to

make the law as effective as possible, would it not be better to make it cognisable and to provide safeguards against harassment? Would you not for instance provide that the report to the police should be enquired into by an officer of high standing?

A. I would take all the risks than give the power to other agencies than the parties directly concerned. I would not be satisfied with any safeguards.

Q. Would you be satisfied if a provision is made to the effect that no case should be tried if it is within marital relations unless there is a preliminary enquiry by the Magistrate to satisfy himself that there is a *prima facie* case?

A. That will be too much harassment. First of all there is the preliminary enquiry; and then there is the Court. Why have all these laborious processes?

Q. In order to exclude the possibility of harassment by malicious people and otherwise. Would you not exclude the possibility of frivolous prosecutions by making this preliminary enquiry obligatory?

A. I think the Magistrate has a sufficiently long arm to punish offenders. He can even prosecute himself.

Q. Do you not think that greater protection is required in marital cases?

A. The peace of the family would be disturbed by allowing such cases to go to Court. One would not expect that the wife and the husband would live peacefully after a Court proceeding.

Q. Supposing a report is made by some individual that a girl is below the prescribed age, the Magistrate can send for the register of births and see if the complaint is reliable. The question will be only whether there has been consummation, and if so what was the age. Many cases can be cut short like that by means of a preliminary enquiry.

A. For such complaints it will be obligatory on the party to produce the age certificate and some proof about consummation, and that would be sufficient.

Q. You are aware that under 12 the cases have to go before a Sessions Judge, and above 12 the cases will have to go before the Magistrate. If after such a preliminary enquiry, the case is directed to be transferred to a Matrimonial Court, consisting of a Magistrate and two non-officials do you think it will inspire better public confidence?

A. Surely not. I do not want to make a general sweeping assertion; but I do not think that the juries and assessors inspire much confidence in the public.

Q. Do you think that suitable people will not be forthcoming for the purpose?

A. No; we cannot get suitable men.

Q. In order to restore good feeling between the husband and the wife would you make cases within the matrimonial state compoundable?

A. Yes; I would make them compoundable with the sanction of the Court.

Q. By making cases non-cognisable you are reducing the chances of detection. Can you suggest any method for facilitating detection?

A. No; I have not thought about it.

Q. As a complement to the law fixing the age of marriage would you have a system of registration of marriages, reports being required to be made to a prescribed authority?

A. I think that will be all right.

Q. Who should be required to maintain these registers?

A. The Kazis, or the city Magistrates or some other sufficiently responsible person.

Q. Would you like the register to be maintained by the Kazi, or would you give the power to Municipal and Local Boards as in the case of births and deaths?

A. I think that Municipalities and Local Boards would be preferable.

Q. Would you entrust the work to the executive authorities in the villages?

A. Yes; the Patels are the persons acting under the executive authority, and they will do that.

**Written Statement, dated the 27th August 1928, of Rao Bahadur R. R. KALE, B.A., LL.B., M.L.C., Advocate, President, Satara District Social and Liberal Association, Satara.**

*Religious and Customary Aspect.*

1, 6, 7, 8. So far as I am aware there is no dissatisfaction with the state of the law as contained in Sections 375, 376, I. P. C., about the age of consent; and the general fear has entirely disappeared which was entertained when the law was amended in 1891 by raising the age limit, over which a great controversy had raged and about which there was such a violent agitation not only among the masses but among a certain class of educated people represented by what was known as the Tilak School of thought, which maintained that the raising of the age limit would constitute an interference with the injunctions of the Hindu Shastras. It is a matter of satisfaction to find that the view propounded by the late Dr. Sir Ramkrishnapant Bhandarkar that the precepts of the Shastras about the time of 'Garbhadan' (Consummation of Marriage) are only permissive and not mandatory has prevailed; and such consummation now-a-days takes place long after the appearance of the first Menstrual course and very rarely, if at all, at the first course even among the Orthodox section of the people. Excepting the Asvalayan Smriti, which was unknown to the Authors of the Nibandhas, there have been shown no Smriti Texts which lay down any injunction about the time of the 'Garbhadan'; and the authority of the Nibandhlikars has very much been weakened, if it has not altogether disappeared. No penalty is ever enforced beyond perhaps an insignificant two Anna '*Prayashchitta*' which again is never taken consciously or as a mark of penitance. The Garbhadan Ceremony is only performed as a religious right in some cases and that too among the Higher Castes of the Hindus especially the Brahmins. It is generally performed after the attainment of puberty and that too a year or two after puberty. Co-habitation is not common among any class before puberty; but among the non-Brahmin class it is believed to take place soon before or after puberty even though the girl attains it before she has completed her 13th year and this is probably due to the great disparity of the ages of the bride and the bridegroom, since among the lower Castes the latter is fully grown up, while the former is comparatively of a tender age.

*Need for raising Age limit.*

5. Among the Higher Castes of Hindus, girls attain puberty between 12 and 13; and in rare cases even before 12; whereas in the lower Castes they do so between 14 and 15 and in rare cases even after 15.

9. I do not think that the attainment of puberty is a sufficient indication of physical fitness for consummation of marriage. I think that the completion of the 16th year is a proper time for such consummation; or in any case at least two years after puberty ought to be allowed to pass before a marriage should be consummated without injury to the health of the girl and that of her Progeny.

*Need for Legislative action.*

2, 3, 4, 10, 13 to 21. While believing that great general progress in the direction of social reform can be made and is being made by education and

social propaganda, I think that the object in view should also be secured by the strengthening of the Penal Law on the subject. So far as the Higher Castes are concerned, public opinion has certainly been in favour of an extension of the Age of Consent in marital and extra-marital cases since the Amendment of the Law in 1925. But the lower strata of the society are still backward in realising the need of late marriages and further there is a growing increase in the employment of woman labour in Factories and other work. Therefore they are more exposed to risk than formerly; and in the interest of personal safety it is necessary that the Age of Consent as against strangers should be raised to 16. As regards husbands the limit may be fixed at 14, having regard to the social Customs prevailing among the people, especially those classes among which there is no social progress. Cases of Seduction and Rape are occasionally met with among the lower classes and it is necessary that the limit of 14 should be raised to 16. Among the higher castes marriages are now-a-days usually put off beyond the 13th year of the bride but among the lower castes, the Age of Consent limit, if raised, would to some extent operate in the direction of postponing early marriages. The raising of the Age of Consent within the marital state to 13 years cannot be said to have any effect in protecting married girls against cohabitation with husbands. In my opinion such protection can only be secured by some such enactment as Mr. Sarda's Bill. In my opinion a girl in this country cannot be said to be competent to give an intelligent consent to cohabitation unless she has completed her 16th year. I do not think that women in this part favour the consummation of marriage for their children below the age of 14 in the case of girls and 18 in the case of boys. The birth registers kept in cities and villages sometimes do not give the names of the persons born but merely state the birth of a male or female child. This is probably due to the custom of not naming the child until after some days after its birth. I think stricter orders in this respect by the authorities responsible for this work would remove the difficulties sometimes experienced in such cases. The raising of the age of consent to 14 years or above would not remove this difficulty.

#### *Procedure.*

I would separate extra-marital and marital offences into different offences. In this connection I may point out that Dr. Gour's Bill would meet the case, but in his proposed bill, while he adds a new section 376A, as a punishing section, he omits to amend the exception to Section 375, thus leaving the substantive defining section as it is. This defect needs to be removed by replacing the word '13' by '14' in the exception. I do not think that the present procedure of trials for offences within and without the marital state needs any alteration.

In conclusion I may add that any legislation fixing the minimum age of marriage is not likely to be favoured by public opinion, if by public opinion is meant the vast majority of the people in this part; but educated and intelligent public opinion has now veered round the view of the need of social legislation in such matters and I for one I am in favour of such legislation.

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**\*Oral Evidence of Rao Bahadur R. R. KALE, B.A., LL.B., M.L.C.,  
Advocate, President, Satara District Social and Liberal Association,  
Satara.**

*(Poona, 2nd November 1928.)*

*Chairman:* Are you the President of the Satara District Social and Liberal Association?

A. Yes.

Q. Is that one Association or two?

A. There is a separate Association existing from 1894. This Association deals with social questions only. There is also another Liberal Association for political purposes. Since the Reforms we have started the Liberal Association calling it Satara District National Liberal Association for political purposes.

Q. Now you want the age limits to be raised to 14 within marriage and 16 outside marriage. Is it correct?

A. Yes.

Q. What is the age you want for the law of marriage at all?

A. 14.

Q. How much for boys?

A. 17.

Q. But you have said that any legislation fixing the minimum age of marriage is not likely to be favoured by public opinion.

A. In certain communities there is a great deal of feeling against any legislation fixing the age of marriage.

Q. Do you think that there is any real danger if girls attain puberty and are not married till 15 or 16?

A. It depends upon the physical condition of the girl.

Q. Have you any reason to believe that the present statutory age of 13 has been infringed in many cases and that consummation takes place before 13?

A. In villages there are such cases, but not in the towns and in the advanced classes. As I have stated when there is a disparity in the age of the bride and the bridegroom, for instance when the bridegroom is a grown-up man of 25 or 30 and the girl is about 10 or 12, consummation takes place even before 13.

Q. Is that before puberty?

A. It is just about puberty time. I am afraid it is sometimes before puberty.

Q. Do you think that such cases are more common among the Gujjars and the Marwaris? Do you know of any particular classes in the Satara District in whom it is more common?

A. I do not think it is common among the Gujjars, but it is common among the Mahrattas especially the Kunbies.

Q. Do you think that the present law of the age of consent has been effective?

A. I must say that there has been no case within my knowledge in marital relations.

Q. How many years have you been at the bar?

A. Since 1892, nearly 36 years.

Q. Have you heard of any cases during that time?

A. I was public prosecutor for 20 years at Satara. During that time I did not come across a single case within the marital relations.

Q. What is the reason for these cases not coming to light?

A. It seems that the society is so constituted that even in cases of rape by strangers the husband or the relations are unwilling to let cases come to court. It is much more so in marital cases.

Q. If the law of the Age of Consent is raised as you suggest, do you think it will still remain a dead letter?

A. I have suggested that it should be 16 in the case of strangers. For marital cases I have put down 14.

Q. Supposing the age is raised to 14 as you suggest, or 15 or 16, do you think that there are any chances of the law being effective?

A. So far as I know I do not think there is much chance of detection and the cases being brought to light. The law will remain a dead letter



as it has remained. Even if the age is raised to 14, I fear it will remain so.

*Q.* Have you any means to suggest for making it effective?

*A.* I do not think that the proposal about vigilance societies or things like that would be really effective or really conducive to the well-being of society.

*Q.* Then why do you suggest an advance on the present law at all?

*A.* Because I think it will then raise the age of marriage. It will indirectly help to raise the age of marriage. If there is special propaganda making it known that intercourse below the age fixed would be an offence it might go some way towards prolonging the age of marriage.

*Q.* Do you think that orthodox opinion is more against the law penalising marriages rather than raising the age of consent?

*A.* Comparatively they would object to fixing the age for marriage because marriage would be a public event and would be well-known. As regards the age of consent there is not much chance of detection. That is the reason why they will not object to the age of consent.

*Q.* In other words it does not practically interfere with what they have been doing and will not interfere with what they will continue to do hereafter. Is that so?

*A.* Yes; that is so.

*Q.* Can you suggest any means by which we can reconcile orthodox opinion and allow them to have marriages at any time and at the same time effectively prevent consummation before the prescribed period?

*A.* I am afraid I cannot suggest any means.

*Q.* For instance one of the suggestions made is that security bonds should be taken from people to say that no cohabitation will take place before the age fixed for consummation. Do you think that will help?

*A.* In the practical working of a law of this kind I think the difficulties are very great. How can we know that consummation has taken place? In olden days the Garbadhan ceremony was performed in the higher castes and it was publicly known. But consummation ceremony is now disappearing and nobody will know much about such things.

*Q.* Do you think that there are a vast number of people especially the people in the villages amongst whom early marriage is very common?

*A.* Yes; but they are now following the example of the city people and raising the age of marriage and the age has now been raised to 11, 12 and 13. Formerly it was very low, and sometimes children in the cradle were being married.

*Q.* Do you know about the system of registration of births in the villages?

*A.* In the villages as soon as a child is born, the village officer notes down the names. In some cases the name of the child is given sometime after the child is born. In such cases the village officer puts down the name as soon as the name is given. It is very rarely that cases are omitted to be entered. There is Form No. 14 and it is compulsory. Almost in all cases we get the births registered. But there is difficulty about identity, when the name of the child is not entered, for instance in cases where a number of children are born at very short intervals. Otherwise the entries are fairly good.

*Q.* Is there any law about the registration of births and deaths in the villages?

*A.* I think there is a law, but there is Form No. 14 which is compulsory.

*Mrs. O'Brien Beadon:* Is education fairly good amongst the girls here?

*A.* It is fairly good especially amongst the girls of the higher classes, mostly Brahmins, and it is going on much in the same way as that of boys.

*Q.* What will be the percentage of the educated girls?

A. It will be nearly 50 per cent. in towns. The percentage would be very small in the villages. In Taluka towns and district towns there are vernacular schools and girls of the middle classes go to these schools.

Q. Do you think that there is a great deal of seduction of these girls?

A. No; I do not think.

Q. We have been told by some that parents or guardians are very much afraid of sending their girls to schools because of the fear that they might be carried away or seduced. Is that so?

A. I think such cases would be very rare; perhaps not even one in a thousand. In my part of the country I have not come across a single case like that.

Q. Do you think that the physical health of the people is deteriorating?

A. Yes; especially in the girls it is deteriorating.

Q. What is the reason?

A. There are many reasons. Of course one of the reasons is that the girls are learning and trying to pass examinations. I must say that the girls are more studious and that is telling upon their health and constitution. In case the girls take to higher education seriously they do suffer.

Q. Is that because they have not got sufficient arrangements for exercise?

A. Girls who have college education have sufficient facilities for exercise. Colleges like the Ferguson college have got facilities for exercise, but still I must say that the strain of education has told upon their physical constitutions.

Q. Is it only a strain on the physical constitution, or is there mental breakdown also?

A. There is mental strain and it does affect their physical constitution.

Q. Do you mean by physical deterioration that they fall a prey to diseases?

A. I mean general weakness. I have seen girls who have attended college and had taken a degree, and when they are married and have the first child birth, they either succumb or they get extremely weak compared with other girls who have had no education and who are generally delivered without any trouble.

Q. At what age do these child births occur?

A. At 18, 19 or 20.

Q. You say you have taken some statistics. How many cases did you investigate?

A. I have investigated about 100 cases.

Q. In how many cases did you find there was deleterious effect?

A. In about 50 per cent. of the cases.

Q. After how many years of study?

A. After about 5 or 6 years in the school and about 4 years in the College.

Q. Do you think that early marriage is itself the cause of deterioration?

A. I do not think it is the sole cause. It is one of the causes.

Q. Would you call it a potent cause or a subsidiary cause.

A. I would say it is only one of the causes. Early marriages are even now taking place in the villages but I do not think the girls succumb or physically suffer either. These girls are married at about 12 and become mothers at 14 or 15 and yet they are very strong.

Q. But in the villages people work in the open and are usually strong.

A. Not necessarily. For instance my servant has a large family and they are not working outside. One of his daughters was married at 12 and had child at 14, but she is very strong all the same.

*Q.* It is well-known that in the villages people are strong and their constitution is better than that of the towns people. Can you specially tell us anything about the town people?

*A.* The case of my servant is an example. He belongs to a low class of society; he spends his time in towns, and his forefathers settled in towns a generation or two ago. Therefore he cannot be called a person belonging to a village.

*Mrs. Brij Lal Nehru:* You say that there is no child marriage in towns, does that mean that in towns there is no child marriage in any community?

*A.* Amongst the higher classes the marriages do take place from 12 to 14.

*Q.* Are there any communities in towns amongst whom child marriages exist?

*A.* There are castes in which there is still child marriage but it is growing less and less.

*Q.* You say that people are beginning to favour early marriages; I would like to know the cause for that. You said that they were afraid of immorality. Is that the only cause?

*A.* It is one of the causes. Other causes are the difficulty of getting suitable husbands when the girls grow up. That difficulty is also being felt.

*Q.* That shows that early marriages have not stopped, and that both boys and girls marry early.

*A.* The thing is that the age of the boys has advanced much more, and boys are generally reluctant to marry before they are 23 to 27. But so far as the girls are concerned, the age limit for them should be considered to be 15 or even 14. There have been instances when girls remained unmarried till 20 or 23, but then they found it very difficult to get suitable husbands. Unmarried boys might be there, but still there is a feeling that as soon as a girl has passed her 20th year she is over-aged.

*Q.* Do you mean to say that really there is nothing definite about it, but some people are dissatisfied with late marriages taking place?

*A.* Yes.

*Q.* Is this fear of immorality very common?

*A.* There is neither any cause for it, nor is there any such fear. There is no doubt apprehension in the minds of some but it is not the general cause.

*Q.* Do you think this age of consent law is generally known to people?

*A.* I am afraid not. Even amongst the educated people it is not generally known, because it does not interfere with them.

*Q.* Do you think there is no necessity for this law?

*A.* As I said the law will be of some use in postponing marriages and therefore it will be useful in an indirect way.

*Q.* If this law has done nothing indirectly so far, what is your reason for believing that if the age is raised to 16 it will be known to people and it will have an indirect effect?

*A.* That is why I have suggested publicity and propaganda work being undertaken side by side.

*Q.* Are any of the penal laws given publicity in the way you suggest? The only means of making them known is to apply them in concrete cases.

*A.* The law will help social reformers who are already carrying on propaganda. They will tell people that they should not have child marriage because there is a law to that effect.

*Q.* Do you want to have it as a sort of propaganda measure in the hands of social reformers? But you say that there should be no change in the procedure of trials and that the procedure that is now adopted in respect of marital and extra-marital cases should be the same. How will that work in case the proposed law is adopted as a propaganda measure?

A. These are mostly sessions cases, and considering that there is either a jury or assessors I think that safeguard is sufficient, and there need be no difference in the ultimate trial. With regard to the preliminary initiation of the case there is some safeguard about the District Magistrate initiating the enquiry. So far as the trial is concerned, I think the Sessions Courts as they are constituted will do. One of the reasons why I want the Sessions Court is that if the offence is brought to the court the punishment would be deterrent.

Q. If this law is to serve in the hands of the social reformers as a propaganda measure do you not think that the procedure should be simple and the punishment lighter?

A. I agree that the punishment should be lighter.

Q. Would you advocate the trial of these cases by Magistrates assisted by assessors belonging to the same community as the offender?

A. I would rather suggest that the trial should be by a responsible judicial officer like the Sessions Judge assisted by a jury.

Q. Will you have women on the jury?

A. Yes, if possible and wherever available.

Q. What will you have as punishment?

A. The question of punishment is rather a difficult question in these cases, because we have to consider it from many points of view. It will depend upon the nature of the injury and the kind of offence in particular cases.

Q. But what punishment would you provide by law?

A. With regard to marital cases I would really have some punishment up to 2 years. Below 12, cases will hardly arise. The absence of the husband for more than two years from home is likely to result in bringing about a separation.

Q. If the age is raised to 14, would you have the same punishment as exists at present between 12 and 13, or would you have a lighter punishment?

A. I would have the same punishment, fine or imprisonment or both at the discretion of the Magistrate irrespective of the age. Above 12 I would leave the law as it is.

Q. What is the reason for the discontinuance of the Garbadhan ceremony?

A. There are two reasons. First of all these religious ceremonies are getting more and more obsolete excepting marriage and Upanayanam. There is a tendency amongst the educated classes not to observe these religious ceremonies. Secondly, girls have usually attained puberty at the time of marriage and immediately after consummation takes place without any ceremony at all.

Q. Does the Garbadhan ceremony take place in cases in which girls are married early?

A. Yes; it does take place in such cases. It does not, however, exist among the lower classes but only in the higher castes.

Q. Does it not exist in some other form among the lower classes?

A. I have made some enquiries, but I have been told that there is no religious ceremony, though there is sometimes a social ceremony.

Q. But even amongst them do you think that some period elapses between the attainment of puberty and consummation?

A. Yes.

Mr. Mitra: What age would you fix for extra-marital cases?

A. 16.

Q. In the case of marital relations the physical development of the girl is the main consideration; but in extra-marital cases the intellectual powers of the girl and her experience of the world outside have to be taken into consideration. Do you then suggest that 16 might be fixed as a first step and that it might later on be raised to 18?

A. I would have only 16; and my reasons are these. 18 is the age of majority according to civil law, but it has no application in criminal law. I think that at 16 a girl attains sufficient discretion.

Q. Do you think that girls in India are sufficiently educated at 16 to realise the consequences? In fact do you not think that they are very much inferior to their sisters in Europe in the matter of education and otherwise? Would you still advocate that the age should be fixed at 16?

A. Your fear seems to be that if the girl is over 15 the man will escape; and you think that it should not be so because a girl at 16 will not be sufficiently mature in intellect to give an intelligent consent. The law presumes that at 16 a girl is sufficiently intelligent to give consent to the act, and under the law if the girl has given her consent it is no offence.

Q. Will you explain why it is 18 for procuration?

A. I regard procuration for immoral purposes and prostitution the worst offence, because I think the girl cannot realise the consequences. But in cases of rape or enticement of the girl for illicit intercourse the law says that the girl should not be punished, but the man should be. The man is on the defensive. If as a matter of fact the girl has consented, the man ought not to be punished. That is the principle under the law.

Q. Do you then consider that procuration is more aggressive?

A. I consider procuration is more heinous and more serious.

Q. Now who are the people who would object to the fixing of the age at 16 in extra-marital relations?

A. The public will think that you are trying to make cases punishable in order to protect the girls, but you are depriving the man of protection. Illicit intercourse may take place, but it may not be at the instance of the man at all but at the instance of the girl. You now deny protection to the man even in such cases. Therefore the law will work hard so far as the general public is concerned, and innocent men would be found guilty and punished. In this connection I am reminded of what Macaulay said in the case of adultery. He said that conditions in India were different at the time (1861). The women were not much educated and he has given that as a reason why they should not be punished. I think even in the case of rape if conditions are changed, we shall have to change the law.

Q. Do you think that girls of 16 in this country are sufficiently intelligent to realise the consequences?

A. I think they are. In the case of adoption the age fixed is 16 and it is presumed that at that age they have sufficient understanding.

Q. You are referring to the Shastriac texts and say that they are only permissive and not mandatory. Can you tell us what texts you have in mind?

A. I am referring to Aswalayana Smiriti. I shall send you a copy of the original text.

Q. In your statement you say that cohabitation amongst non-Brahmins is believed to take place before or soon after puberty. You also say that amongst the lower classes the age of puberty is between 14 and 15. Then do you mean to say that cohabitation takes place at the time of puberty?

A. Yes; it is so.

Q. Do you belong to the Brahmin community?

A. Yes.

Q. Am I correct in saying that you depend upon social propaganda for raising the age of marriage?

A. Yes.

Q. So far as the non-Brahmins are concerned, do you think they would be affected by propaganda and social reform? Do you not think it will take time?

A. I am in favour of legislation; but I think people will resent.

Q. What will be the form of resentment of the people?

A. People will celebrate marriages in spite of the law, and there will be prosecutions; and in the case of the consent law there will be no prosecutions. If you make marriage illegal, there will be opposition and that will give rise to discontent.

Q. You say that non-Brahmins have cohabitation at 14 or 15, so they are not mostly the offenders.

A. Because the age of puberty amongst them is higher.

Q. Do you think that it is the Brahmins who will be the offenders?

A. But now-a-days even amongst them ante-puberty marriages are very rare. Generally they are post-puberty. At least for the last few years the age of marriage is 15 on the average.

Q. So far therefore as this part of the country is concerned, fixing the age at 14 does not interfere with anybody.

A. No; it does not interfere.

Q. I think you said that the girls are likely to go astray and you remember one such case. Do you know of any other cases when girls went astray in married life. Do you think that it will be too far to argue that if the age is raised girls will go astray?

A. What I mean to say is that it gives more opportunity to persons who are evil-minded. I do not say that the women will be the aggressors.

Q. You say that you are for separating marital and extra-marital offences; what do you mean by that?

A. If the offence is committed by a stranger it is a very serious offence, and must be visited with very severe punishment because the offender has absolutely no excuse; but in the case of the marital offence the relationship is a matter which is of significance. The husband thinks that he has a right to cohabit.

Q. Would you suggest any difference in the procedure?

A. As regards procedure I do not think there should be any change. I would however suggest that these offences should be made triable in all cases by a jury.

Q. It has been suggested to us that the trial of these cases should be in camera, that the offence might be made compoundable, and if possible, they might be tried by a separate matrimonial court constituted for the purpose, so that more cases might come to court? What do you think of the suggestion?

A. How can more cases come to court?

Q. It has been suggested that it is because the person is scandalised that cases do not come to court, and if these safeguards are provided then cases will come in large numbers.

A. Even now the judge, if he thinks fit, may order the court to be cleared. I do not think the suggestions made will help in any way.

Mr. Bhargava: You say that there are many girls going to the colleges here. What would be the population of the girls reading in the various colleges?

A. The total number of the girls going to the colleges, including the medical college, would be about 200.

Q. And are they usually above 16?

A. Yes.

Q. And are the girls generally unmarried?

A. Yes

Q. By the time they finish their studies, their age must be about 20 and they generally marry above 20.

A. Some of them do not complete their studies in colleges.

Q. So we may take it that 18 would be the average age at which they are married. Are there special girls' schools or is there co-education?

A. Excepting Karve's University there is co-education everywhere.

Q. How many out of the 200 girls have co-education?

A. About 150 will have co-education and 50 would have separate-education.

Q. Do you want legislation for marriage on the lines of Mr. Sarda's Bill?

A. Personally I like it, but people will not.

Q. According to the Indian Penal Code a girl over 12 is also to understand an offence, and if the girl consents she is liable to be prosecuted as an abettor. Do you think that a girl below 16 is capable of understanding the nature of the act?

A. Below 16 she is not.

Q. So that you want that there should be a change in the law so far as the criminality of the girl is concerned, and that the age may be raised to 16.

A. How can there be abetment of rape? The girl is not punishable as abettor either in the case of adultery or rape. The offence in the case of rape is an offence against herself and she cannot be a party to the offence.

Mr. Thakurdas Bhargava: If a girl consents to intercourse and if she is more than 12 she is liable to be prosecuted as an abettor of the crime?

A. There cannot be any abetment of rape. Rape is against her will.

Q. Supposing a girl consents at the age of 13½, is she not an abettor?

A. Her consent is no consent.

Q. But there is consent as defined in Section 90, I. P. C. So far as consent is concerned there is a section which says that if a person consents and he is of the age of 12 then he can be in law assumed to have consented otherwise his consent is no consent.

A. That is general provision with regard to consent.

Q. First reason that you give for fixing the age in extra-marital cases at 16 is that 16 is the age given in Section 361, etc. Supposing there is dissatisfaction with regard to this second age; are you in favour of raising that age also?

A. My opinion is that it should also be raised. It is an offence which depends upon consent. I think at 16 a girl is good enough to give an intelligent consent.

Q. So far as unmarried girls are concerned or widows are concerned, a girl of 16 is capable enough to understand that the act to which she consents may be fruitful of such consequences as birth of an illegitimate child.

A. I may say that it is an offence against the man because he does something against her will.

Q. The question is about the girl's mental development.

A. I think she is quite capable to understand the consequences; she is mentally and physically developed at 16. If you raise the age to anything they are not able to understand the consequences when they fall into temptation. I have seen cases of miscarriage in grown up ladies more than in younger girls.

Q. If you raise the age to 18 is she liable to be punished for abetment?

A. You are trying to punish offences which are committed by oneself just like suicide.

Q. Is any harm caused by oneself to oneself in the interests of society? You want to penalise marriages by parents and parents are the best guardians of a girl. A girl of 18 should be protected against herself.

A. If you are making both of them guilty I would not object to what you are putting forward as a hypothetical case but it does not come in the present question.

Q. Are you of opinion that such cases should be tried by a Sessions Judge?

A. I have suggested sessions court throughout.

Q. In Sessions court there are two stages—the commitment stage and the trial stage. In marital cases much scandal will be diminished if they are triable by only one court by an experienced judge of over 10 years standing.

A. There is difficulty with a judge of 10 years standing. There will be no jury and no assessors. The preliminary enquiry can be gone into in camera.

Q. Or you can dispense with the first enquiry?

A. There must be some enquiry before a case is put up before a Sessions court.

Mr. Kanhaiya Lal: You have said that legislation fixing the minimum age of marriage is not likely to be favoured by the public?

A. It will not be favoured either by the educated public opinion or by the rural public opinion.

Q. Would you therefore recommend as a preferable course that an age should be fixed for consummation of marriage?

A. Yes.

Q. You recommend 14 as the age for consummation of marriage?

A. Yes.

Q. Would that give the girl sufficient protection?

A. Having regard to the society and environments 14 is sufficient.

Q. Are you aware that according to the Ayurvedic authorities including Sushrut, a girl not fit for child bearing until she is 16 without injury to herself and to her progeny and medical opinion wants to fix a still higher age?

A. I must say that doctors differ. I consulted medical opinion and the doctor said that it all depends on particular cases. If medical authorities say that it is harmful I would not mind fixing a higher age.

Q. Are you aware that there is high infantile and maternal mortality in the country? And in order to check it, would it not be desirable to fix a higher age limit than 14 recommended by you?

A. I am of opinion that infantile mortality is caused by so many causes. It was stated that grown up girls owing to strain of education usually suffer in health irrespective of the age at which they are married and that is a cause for infantile mortality.

Q. But if early consummation is one of the causes would you not do something to reduce it?

A. I am rather not sure whether it is really one of the causes because I have myself consulted some medical authorities and was told both ways.

Q. Would it not interfere with the education of girls? Would not a higher age involve the possibility of better education being given to the girl?

A. Yes.

Q. Do you recommend 14 only as a first step or as a final step?

A. As long as early marriages are taking place I would leave 14 as the age. If marriages go higher the whole thing will be all right.

Q. Even after marriage would you like to leave some margin for education and for the physical development of the girl so that she may be fit for maternity?

A. It would be extremely hard to make the action of a married couple an offence. It would be inconsistent from the society's point of view.



Q. If the age of marriage of girls is fixed at 14 then you would have no objection to the age for consummation being fixed at 14.

A. No, but then where is the need for that law?

Q. There might be cases who might defy the marriage law and consummation may follow?

A. Yes, that would mean double punishment.

Q. Can you suggest any measures to bring cases to light?

A. I cannot suggest any measures.

Q. Do you think vigilance societies or panchayats will help us in this matter?

A. I do not think; they would cause more harassment.

Q. Would you make the material cases cognizable or non-cognizable?

A. If you want these cases to be detected more easily then they should be cognizable.

Q. Would you as a safeguard require that all marital cases of this character should be enquired into by higher officers of the police like Deputy Superintendent or Inspector of Police?

A. Certainly.

Q. Would you also require that a preliminary enquiry should be made in all these cases before notices or warrants are issued to exclude vexatious or malicious cases?

A. When you have made it a cognizable case then the police will be in a position to see the evidence.

Q. But that evidence is to be examined by the Magistrate and if there is a preliminary enquiry he will be able to eliminate false cases at once.

A. I think it is rather going into minor details. If superior police officer investigate a case then preliminary enquiry is unnecessary.

Q. Under the present law one class of cases (in which the girl is below 12) would go to the Sessions Judge and another class (in which the girl is between 12 and 14) would go to a Magistrate. Would it not be better to have a matrimonial court instead, consisting of a Magistrate and 2 non-officials or a Sessions Judge and 2 non-officials to try these cases so that the trial may be expedited and greater confidence may be inspired in the public mind.

A. I think Sessions court with jury should try such cases.

Q. If there is a matrimonial court there will be a Sessions Judge and 2 non-officials and the court will be able to dispose of the case at once?

A. I would not object to such a court.

Q. Would you make a marital offence compoundable so that good feelings might be restored between the husband and wife when possible?

A. If it is a question between husband and wife it will be compounded out of court; but if it is made cognizable the police are the complainants.

Q. Would you like it to be compounded with the sanction of the Magistrate, the accused being on the one side and the guardians of the wife on the other?

A. Yes.

Q. If we are going to have a law fixing the age for marriage and also a law fixing the age for consummation would it not be desirable to have an auxiliary legislation for registering marriages?

A. Yes, at the time of marriage the date of birth should be given.

Q. On whom would you place the obligation for maintaining the register—municipal boards or local boards?

A. The same agency which maintains the birth and death registers should keep this register also.

Q. I understand that in the municipal areas the municipality is maintaining the registers of births and deaths and in rural areas I understand there is an agency employed under the control of the Director of Public Health?

A. No, in the villages they are under the revenue authorities.

Q. Who makes out the returns of vital statistics?

A. The village officer. The information is supplied to the Public Health Department by the Mamlatdar.

Q. Would you further recommend that a marriage certificate should be granted as soon as a report of marriage is made?

A. I think there is no necessity. In case of dispute certified copies can be obtained.

**Written Statement, dated the 13th August 1928, of Mr. DATTATRAYA GANESH KALE, Asoda, Taluka Jalgaon, West Khandesh.**

1. There is no dissatisfaction but that does not prove that the age of consent is really what it should be.

2. (a) The law should not be retained as it is.

(b) The age of consent, in my opinion, deserves to be raised. The various circumstances on which I hold this belief, will be given in the answers that follow.

3. The crimes of rape and seduction are not rare in my part of the country. The number of cases that may be brought to light may be few but the evil is there and I believe it is a growing evil with regard to cases of abduction. So far as cases arising out of marital relations are concerned the general educational condition of the people, especially of the backward classes, is such that such cases do not come into court very often and are rarely detected though the evil is prevalent and growing and it ought to be checked.

The law of 1925 has been in operation for a short period and it appears that it was only an intermediate step. It is difficult to give a decided opinion on that point. But it can safely be said that it has done good. Diffusion of knowledge in all its aspects and driving out of bad customs and habits is the only means in making the law more effective. Yet the measure will be more effective in its operation if a committee of both the officials and non-officials is appointed to look into the cases. I make this suggestion only because I feel that many such cases are not reported to the Government-officials for fear of consequences.

4. The amendment will be truly effective if the marriage is put off beyond 13.

5. At 13 in general (in the Bombay presidency) they attain puberty. This holds true in the case of the advanced classes. But amongst the wild tribes like the Bhils or Kolis, the age may go 15 even. Among the peasants it comes to 14; all this difference being due to their habits of life.

6. Cohabitation is common in our part of the country just after puberty. I know of only one case of cohabitation before puberty from the Brahmin class. This case did come to the court. Attainment of puberty is necessary for cohabitation only amongst the advanced classes. Amongst the Intermediate and the backward classes, attainment of puberty is not necessarily the rule: Standard structure of bodies of girls is supposed to be fit for cohabitation.

7. The authority for cohabitation only after puberty is a religious injunction from 'Sanskâr-Bhâskar' (संस्कार-भास्कर ऋतुशान्तिप्रयोगः) "कृतस्य

रजोदर्शनं शांत्यख्यं कर्मराः सांगतासिद्धयं यथा सत्तया ब्राह्मणं त्रयोयथ्ये ।  
 .... 'रजोदर्शनात् षोडशहो रात्रीणि ऋतुस्तन्मध्ये रात्रिच द्वयर्वा  
 दिनिहिदिन . . . . ."

As for penalty, this much only is said in गर्भाधानप्रयोग, "अथवा राज  
 व्यतिरिक्तो वीरतरः । चं संगायितामि प्रैषः ॥"

(But generally I do not attribute the early consummation of marriage to any religious injunction. It (practice) exists and it is the bad custom that is at the root of it and hence this evil of early consummation has grown.)

8. 'Goana' or 'Garbhadan' ceremony is usually performed only amongst the advanced classes in our part. It is not anterior to marriage ceremony; it may coincide with the consummation of marriage if the girl has attained puberty. The ceremony is expected to come off just within 16 days of the attainment of puberty.

9. I do not think that attainment of puberty does point to physical maturity. By physical maturity, I mean, preparedness for bearing a child. A girl will be physically matured at 16 without any injury to herself or to her progeny.

10. Girls will be competent to give an intelligent consent at 16 and that too if they are taught something of the responsibility of bearing children and of what bearing a child means.

11. During my experience as a social worker I have come across several cases where cohabitation before full physical development of a girl has resulted in injury to her own health and to that of her child. Especially many a wife of the Brahmins class at the age of 15 or 16 is seen suffering either from a great pain in getting their monthly courses or get too much of it.

12. In my opinion, maternal and infantile mortality as well as the physical and therefore intellectual progress of the people is marred. This is my opinion from the fact that the advanced classes of 25 years back were certainly more powerful both in intellect and body than what they are now.

13. Development of public opinion in my part since the amendment of 1925 is not much as it is only confined to classes that are educated. Most of the peasants and the wild tribes are still unlettered.

14. Most of the women favour early consummation of marriage because of their lack of knowledge and of the vicious long standing practice.

15. Difficulties in determining the age of girls in cases of seduction have occurred and especially so in the case of the villagers. I would suggest that a regular Birth-register especially in the villages be maintained by law and should be strictly inspected and supervised.

16. The difficulties would be solved not by merely raising the age but by making the girls literate as well.

17. I would separate extra-marital offences from the marital offences. Punishment for both the kinds should be never a fine or a simple imprisonment. It should take the form of hard labour. The period may depend upon the particular circumstances.

18. I would make no difference in procedure of trials of such offences. A marital offence may get a shorter term than an extra-marital one.

19. I would suggest that every kind of safeguard will be found short, unless it is backed up by literacy amongst the people.

20. I consider that legislation fixing the minimum age of marriage would be more effective in preventing marital offence. At present public opinion

on this side is not yet ripe for any measure. So far as measures are concerned, social propaganda is the chief measure that I would suggest in this matter.

21. I would prefer to rely on the strengthening of the penal law than on the progress of social reforms. As the latter would take a very long time to secure the object in view.

**Oral Evidence of Mr. DATTATRAYA GANESH KALE, Asoda,  
Taluka Jalgaon, West Khandesh.**

(3rd Norember 1928.)

*Chairman* :—May I know what is your profession?

A. I am a farmer.

Q. Are you a Brahman?

A. Yes, Jajurvedi Madhva.

Q. Have you received any education in the local college?

A. I am an actual worker.

Q. What is the population of your village?

A. 5,000. They are Marathi Leva Patidars.

Q. What is the age of marriage among them?

A. A girl is married at any age 2, 4, 6, 7.

Q. Have you got a system of mass marriages at a time within 12 years?

A. There was this custom but it does not exist now.

Q. Is there any interval between marriage and consummation?

A. Yes. A girl is not sent to her husband's house till the attainment of puberty and girls generally attain puberty at 13-14 years.

Q. When girls are sent to husband's house, is there any ceremony performed?

A. In Leva Patidars no ceremony is performed.

Q. Do you think consummation takes place before a girl completes 13 years?

A. It is above 13.

Q. You seem to think that such cases do not come to court though the evil is prevalent and is growing and it ought to be checked. You mean the evil of consummation above 13?

A. Yes.

Q. You further seem to think that fixing the minimum age of marriage would be more effective than the law of age of consent. What age would you recommend for marriage?

A. 14 for girls and the difference between the ages of girls and boys should not be more than 4 to 9 years.

Q. Supposing there is a law of the age of consent what should be the limit for consummation of marriage?

A. 16.

Q. Do you think the law raising the age to 16 will be effective?

A. Yes.

Q. Do you think cases will come to court?

A. Yes.

Q. Who will bring them to court?

A. We shall do propaganda work. I am trying to do some propaganda work and opening a branch of the Seva Sadan at Jalgaon.

*Q.* When these people marry their girls at 7 or 8 if we make a law for marriage at 14 or fix the age of consent at 16 do you think people will take it quietly or there will be great dissatisfaction?

*A.* They would not agree but they will follow the law. If they are educated they would know the law. Some people told me that this Committee has no right to pass any law for fixing the age of marriage because these are religious rights.

*Q.* Supposing such a law were enacted do you think there would be rebellion against it?

*A.* Yes, people will defy the law and go to jail.

*Dr. Beadon:* In answer to *Q.* No. 6 you say that a case of cohabitation came to court. What was the age of the girl?

*A.* 10 and the husband was about 35 years. The girl was injured and her parents informed the police. This happened about three or four years ago. The husband was sent to jail.

*Q.* Apart from this do you know of any other cases?

*A.* No.

*Q.* You say in answer to *Q.* No. 12 that the previous generations were intellectually and physically more powerful than they are now. How can you say that they were more powerful in intellect or body? Have you kept any statistics about their intellectual power?

*A.* The women now-a-days do not take any exercise and therefore they are weak. The older generation did hard work and had plenty of exercise, therefore they were stronger. I have seen my grandmother and grandfather; they are very strong.

*Mrs. Nehru:* Do these marriages of 2—7 take place only amongst the Leva Patidars?

*A.* Yes.

*Q.* Among the Brahmans do not marriages take place early?

*A.* No, because they are educated.

*Q.* Do not even those Brahmans who live in villages have early marriages?

*A.* No.

*Q.* Why is their example not followed?

*A.* Leva Patidars came from Gujerat and they have their own customs. It is only among them that child marriage is practised.

*Q.* What propaganda work were you doing?

*A.* I have had meetings held about education and early marriage, but people do not listen to do away with early marriage.

*Q.* How many schools have you?

*A.* There is one girl school and 2 boys schools.

*Q.* Then you say cases of abduction and seduction do not come to light. Why do not they come to light?

*A.* People are afraid of the consequences because if the matter is brought to the notice of the police they will be harassed.

*Mr. Mudaliyar:* I do not understand the answers that you have given to Questions Nos. 20 and 21. It seems they are contradictory. In answer to question No. 20 you say "social propaganda is the chief measure that I would suggest in this matter", and at the same time in answer to question No. 21 you say "I would prefer to rely on the strengthening of the penal law than on the progress of social reforms". Do you want legislation or do you want social reform or do you want both?

*A.* I want social reform. I do not want any legislation.

*Q.* Of any kind, either for marriage or for consummation?

*A.* There must be a law regulating the age of consent.

Q. What is the age that you would fix for consent?

A. 16.

Mr. Mitra: You know that early marriage is more common amongst the lower classes than amongst the educated classes, and these social reforms reach these classes after a very long time. So that if you leave it entirely to social reforms to bring about the desired result and do not take recourse to law you may not be able to stop early marriage or early consummation for a long time to come. Don't you think therefore that some sort of law is necessary?

A. Personally I am of the opinion that there must be a law both for marriage and consummation. But I am representing here the villagers and they, I think, will not accept the marriage law, but they will be willing to accept the law of Age of Consent.

Q. You suggest that a committee of both officials and non-officials should be appointed to look into these cases. What Committee do you mean? How will it help?

A. People do not give information about these cases to the police as they are afraid of the consequences and they are afraid of the police also. But if a Committee is appointed which has some non-officials as its members the villagers will have the courage of going to it and giving the information.

Q. Do you want that Committee to try these cases or that they should be the complainants?

A. It should only make reports.

Q. Where from will you get officials in the village?

A. The patel and some other prominent men from the village may form the Committee.

Q. You don't want any police interference.

A. No.

Q. You say "I would make no difference in the procedure of trials". Don't you think that if the trials are held in camera and all the scandal is avoided it will help in bringing the cases to light?

A. I think that would help.

Q. The other reason why these cases are not brought to light, you think, is the severity of punishment.

A. Yes. If the husband is punished heavily, the girl's prospects of leading a happy life are gone.

Q. Do you suggest that the punishment should be a small fine in marital offences?

A. It should be only fine. Otherwise the girl will be ruined.

Q. You were referring to a case where the husband was punished for two years. Can you tell us what happened when the husband came out of the jail? Did he accept his wife?

A. No.

Q. Did he have any other marriage?

A. No. It was not possible to have another marriage, when he was once convicted. If he had been a rich man he would have been married.

Q. In answer to question No. 6 you say "standard structure of bodies of girls is supposed to be fit for cohabitation". What do you mean by "standard structure"?

A. I mean, when a girl is fully grown up. A girl say, of 11, living in a village, will be stronger and physically more developed than a girl of 13 living in a town. For the purposes of cohabitation amongst the intermediate and backward classes, age of puberty is no consideration. It is the physical development of the body that counts.

*Q.* To make conciliation possible, do you think that the marital cases should be made compoundable?

*A.* I have no objection to compounding with the sanction of the court.

*Q.* You think if the law of age of consent is passed prohibiting consummation before 16, there will be no great trouble from the orthodox people in the villages.

*A.* No.

*Q.* You think the law will be obeyed.

*A.* Yes. They are wise enough to realize that there should be no consummation of marriage before 16. But they think that they should be allowed to celebrate the marriage whenever they like. They consider it to be religious.

*Q.* Is it due to religious injunction or is it due to custom that this practice of early marriage exists?

*A.* Religious injunction.

*Q.* It is the Brahmins who are expected to follow the Shastras most. When they marry their girls at 14 or 15 won't the lower classes follow them?

*A.* The lower classes follow their customs. They won't care for the Brahmins. Brahmins do observe the religious injunction in some cases.

*Mr. Bhargava :* I understand that the Brahmins marry their girls generally at 14.

*A.* Yes, generally.

*Q.* So that, if the age of marriage is fixed at 14 they won't object to it.

*A.* There are certain occasions on which girls of even 9 or 10 are married. It is considered a praiseworthy act to marry a girl of 7 or 9 sometimes. The people do not want any restriction regarding the age of marriage, although in practice these injunctions are broken. According to these injunctions the girl should be married at 8 or 9.

*Q.* These cases when marriage takes place at 7 or 9 must be rare.

*A.* Marriages do take place at 7 or 9 during the Kanyagat period.

*Q.* In answer to question No. 20 you say legislation fixing the minimum age of marriage would be more effective. Why do you think so?

*A.* By having a marriage law the chances of consummation will be very much less.

*Q.* You say that reports are not made as social odium attaches to such acts. What remedies would you suggest for bringing cases to light?

*A.* Even now in practice the girls are not sent to the husbands' house till 14. The practice accords with the law even now.

*Q.* You want that the age of consent should be raised.

*A.* Yes.

*Q.* Because the practice is 14 you think that if the law is there the people will abide by it.

*A.* They will follow it. People in the villages are generally law-abiding. If there is a law and it is explained to them they will follow it.

*Q.* If the marriage law is explained to them they will follow it also. Is it not?

*A.* They want no restriction regarding marriage. It should be left to social propaganda to bring about that change.

*Q.* Upto what time you think you will be able to convince the people by social propaganda that early marriage is a bad thing?

*A.* In my lifetime I expect that this change will be brought about. In 30 or 40 years the change will come about.

Q. What do you think should be the age for extra-marital cases?

A. 18.

*(Here the witness began to talk in vernacular.)*

Mr. Kadri: Were there any early marriage 25 years back?

A. Yes.

Q. What was the rate of infant mortality then?

A. Very small.

Q. You say infant mortality is due to early marriage. But now early marriage, as compared with 25 years back, is less, but the infant mortality is enormously heavy. How do you connect the two?

A. In those days people observed the religious bindings and took physical exercise. Now both these things do not exist and so infant mortality is the result of these two causes rather than of early marriage.

Q. What is the system of registration of births in your Taluka?

A. The Pattadar keeps the register. It is not accurate.

Q. Can you make any suggestions to make it accurate?

A. The rules that you will make are never followed.

Q. Are the parents bound to report?

A. They are not.

Q. If we have a system of registration of marriages, i.e., all marriages be entered in a register with the names and ages of the parties and such a register is maintained along with the birth register, will it cause any difficulty to the villagers?

A. People will not be harassed.

### Oral Evidence of Mrs. JANAKIBAI BHAT, Lady Superintendent, Poona Seva Sadan, Poona City.

*(Poona, 3rd November 1928.)*

Chairman: You are the Lady Superintendent of the Poona Seva Sadan. What are the several activities of the Sadan?

A. We take up grown-up and married women and give them different kinds of education which would make them useful to the country, for instance we train them as teachers, nurses and midwives.

Q. You have a training college which is recognised by Government.

A. Yes. We have got our industrial schools for women. We teach them cutting, sewing, weaving and embroidery. We have got a press and teach them printing work also.

Q. Have you got any maternity home?

A. In Poona we have a maternity home which has been recently started. We have got maternity homes outside Poona also.

Q. You are yourself a passed midwife?

A. Yes.

Q. Are you also connected with the Bombay Presidency Baby and Health Week Association?

A. Yes; I am one of the Honorary Secretaries.

Q. What age would you fix as the age of consent in marital and extra-marital cases?

A. 16 and 18.

Q. What age would you fix for penalising marriages?

A. 16 for girls and 21 for boys.



Q. Are you of opinion that if there is a marriage law, there is no need for an age of consent law?

A. Yes; I think so. I think that a girl of 16 should be intillegent enough.

Q. Supposing the age of marriage is fixed at 14 or there is no marriage law at all, would you still have the age of consent at 16?

A. In any case I would have it at 16.

Q. From your experience what do you think is the general age of consummation of marriage?

A. In the cities it is generally 13 to 14. In the villages it is 15 to 16. I think city life makes an impression on the girls and it results in early puberty.

Q. What is the average marriage age in Poona?

A. In Poona marriages take place late. The age is generally 16 to 18.

Q. You are talking of the advanced classes. What about the vast majority of people in Poona amongst whom early marriages take place?

A. Yes; there are many cases.

Q. What would be their percentage?

A. I cannot say exactly.

Q. Would it be about three-fourths of the total population?

A. Yes.

Q. Have you reasons to believe that there are cases of cohabitation before puberty where marriages take place earlier?

A. Yes; it takes place in the Gujarati community.

Q. Have you heard of them in Poona?

A. No.

Q. Do you think that consummation is common soon after puberty?

A. It is common.

Q. Do you think there are cases of consummation before 13, the present statutory age?

A. Yes; there are cases.

Q. Yet you know they do not come to light.

A. No; they do not come to light.

Q. What is the reason for their not being brought to light?

A. Reporting such cases would not be good for both the parties. And the mother or father of the girl will not report against the son-in-law. That is the main reason.

Q. Do you think that it is the punishment of imprisonment that deters them or is there any other reason?

A. The family will be unhappy if the husband of the girl is punished, and the girl will suffer afterwards.

Q. If this is a powerful motive for cases not coming to light, what punishment would you suggest?

A. Some fine might be imposed, or some responsible security for the separation of the boy and the girl till the prescribed age, might be taken.

Q. Would you have a heavy or a small fine?

A. It ought to be a heavy fine. Small fine people will pay.

Q. I believe you have a large number of widows in your Seva Sadan. Do you think that if we keep the marriageable age at 16, there is any danger of unmarried girls going wrong?

A. I do not think so. The parents of the girl will take care of their daughter.

Q. Even in the lower classes where marriages take place early do you think parents will take care of the girl?

A. Yes.

Q. Have you heard of any cases like that?

A. Such cases are very few. The girls also know their own responsibility.

Q. What do you think is the view of the orthodox ladies here? Do you think they are coming round?

A. They are now-a-days in favour of late marriages. Time has changed. They know the value of education and they want education for their girls, and as education is impossible after marriage, they think that it is better to have the girls unmarried till they finish their education.

Chairman : But even at 16 there is very little time for education?

A. Ordinary reading and writing can be imparted up to 16.

Q. How many widows have you got in your Sadan?

A. Half the women are widows; they want to earn something for themselves.

Q. I believe you know the Karve University for women?

A. Yes.

Q. Of what age are the girls there?

A. There are grown up girls from 16 to 21. Mr. Karve has so arranged the course that they will finish it at 18 and a girl is fit for marriage at that age.

Q. How long has it been in existence?

A. For the last six or seven years.

Q. Have you ever heard of any cases of going wrong among those girls or in any other schools?

A. No; they know their responsibility.

Q. Have you any reason to think that this legislation either penalising marriages below a certain age or raising the age of consent would be acceptable to the women?

A. Yes.

Q. Even in those classes who marry their girls early?

A. They will grumble for some time but they will see the good effect.

Q. Would there be positive dissatisfaction?

A. Some people will feel it but anyhow we must see that it is for the good of community.

Q. I think Seva Sadan has been contemplating over this question for a long time. Can you suggest any remedy by which the orthodox section of the people may be permitted to have marriages at any age but actual consummation may be put off?

A. At first they will grumble but if we make arrangements for the education of girls then they would not think it is difficult. Girls should be occupied either in education or in something else.

Q. You cannot suggest any remedy, for instance, not to have a law of marriage and only have the age of consent and secure the non-consummation of marriages till 16?

A. Marriage law is the only method.

Mrs. Beadon : Have you taken your training as midwife?

A. Yes.

Q. Have you come across cases in which there were girl mothers below 14 or 15?

A. Yes, many cases. I was practising for 20 years but for the last 8 years I am doing no work.

Q. Do you find a large majority of cases were all right or did they suffer?

A. There is trouble.

Q. Do you think girls of 15 have more trouble than girls of 17?

A. Yes.

Q. What do you specially find—girls cannot deliver or the child is still born?

A. Sometimes there is premature labour and sometimes there is still born child.

Q. Was there a large percentage of cases in which there was a still born child?

A. I cannot give the figures.

Q. What about children of those mothers?

A. The children are not healthy.

Q. You must have noticed these children as they grow. Are they quite comparable with other children of mothers of good age?

A. After a girl is 15 her child is quite normal.

Q. Do you think a girl mother can bear the strain of maternity as well as a grown up mother?

A. I have not noticed that. Young girls do not know how to take care of their children and sometimes there is not plenty of milk.

Q. But we are told that on account of ignorance they are not able to look after their children. Do you think girls below 15 are more incapable?

A. If she is grown up she is more responsible and capable of looking after the children.

Q. Do you think a mother of 18 can realise the responsibility more than a girl of 15?

A. Yes.

Q. Even if a girl of 18 is not educated?

A. Yes.

Q. On the average is the health of an educated girl as good as the health of an uneducated girl?

A. The health of educated girls is not good; they are not taking proper care of their health. They do not take proper food or exercise.

Q. In your Sadan in the boarding house do you make any special arrangements for their exercise and food?

A. Yes. In the evening when the school is over they must play for one hour and we are making arrangements that girls should wash their clothes. We are not keeping any servants; the girls do the work themselves and they get exercise.

Q. Do you find that the girls living in your boarding house are on the whole better than the girls who are educated as day scholars?

A. Yes, they have more regular hours.

Q. Does this hold good as regards girls of about the same age?

A. In the case of poor people the girl is required to do work for the family and she cannot get as good food as the rich ones.

Q. Do the girls who are day scholars come from fairly well off families or are they poor?

A. Those of rich families are in good health but those of poor families have to work for the family and are not so healthy.

Q. Do you find that the girls who are very young have difficult labours?

A. Yes.

Q. Some people have told us that they find that the perineum stretches but there is no special trouble?

A. There is much trouble if the girl is below 15.

Q. Children of mothers of below 15 have the same weight as the children of grown up mothers?

A. I have not seen the weights.

Mrs. Nehru : Have you any experience of villages?

A. Yes. We have got a branch at Baramati.

Q. Do you find that in the villages women generally like early consummation of marriage for their children?

A. Yes.

Q. Have you seen many young mothers in those villages?

A. Yes.

Q. Are young mothers below 15 in majority?

A. Some of them are below 15 but not majority of them.

Q. Have you seen any difference between children of mothers of below 15 and over 15?

A. If the mother is below 15 the children do not get sufficient milk and the result is that the child is lean and unhealthy. People have the bad habit of giving children opium.

Q. Among those people is the idea of marrying girls before puberty on religious grounds still common.

A. Yes there is some idea among the orthodox people.

Q. Is this religious element the strongest?

A. Yes, but it is improving.

Q. Will there be any economic difficulty if the girl stays with her parents up to a certain given age?

A. Yes they will feel it.

Q. But why do you think they will feel it?

A. Because they are poor. If the family is poor parents find it difficult.

Q. If she is a burden, she is a burden both to the mother and to the mother-in-law?

A. In some cases mother may be poor than the husband's side. Rich people would not find any difficulty.

Q. In the towns even, if a girl has no parents do you think the relations will be able to keep her?

A. It is very difficult.

Q. Will such parents-in-law or husbands object to sending the girl to some institution?

A. No, they would not object.

Q. Would you like the police to have any hand in the investigation of such cases?

A. No.

Q. Whom would you like to investigate then?

A. I cannot say.

Mr. Thakurdas Bhargava : I understand from your written statement that you are in favour of social legislation irrespective of the fact whether there are any religious injunctions or not?

A. Yes.

Q. May I take it that whether there is dissatisfaction or not you think the interests of the country require that there should be legislation?

A. Yes.

Q. So far as your experience is concerned average people will not object to such a law.

A. They will object in the beginning but afterwards they will agree to it.

Q. What about widow remarriage among Brahmins in the Bombay Presidency?

A. Widow remarriage is not allowed but if they like they can marry.

Q. Is the number of child widows very great in the Bombay Presidency?

A. Yes. They become teachers and nurses and in some cases if they want they are married.

Q. What is the total number of inmates of Seva Sadan?

A. About 1,000. Including those we have in branches it is 1,700. In every district town we have a branch and there are 8 branches in all.

Q. May I understand that women of rural areas also come and stay in the boarding houses?

A. Yes, there are about 4 or 5 girls staying at Baramati. Two or three of these are Marathis and the rest are Mahars.

Q. Have you got untouchable girls?

A. Yes, 12.

Q. Is there any difference between the touchables and the untouchables?

A. There is some. Untouchables have got a separate room and they are taking their food separately. Otherwise they play together and mix in the school.

Q. When they finish their studies are they taken as district board teachers?

A. Yes. Our school may have so far sent out 500 girls; some of them are teachers and some of them are nurses.

Q. There is no paucity of girls teachers?

A. No, in so many cases they do not get women teachers.

Q. What is the standard of education?

A. We have primary classes up to 6th standard and some of them want to go for training college course. Training college education is 3 years' course and after that they get a certificate.

Q. Do any Mohamedans come?

A. Yes.

Chairman : Apart from what you have said, is there anything that you would like to tell us on this question?

A. The primary education of girls must be compulsory as it is for the boys.

Q. If it is compulsory girls will be prevented from working in the fields and in factories and will not be able to earn for the family?

A. If she takes the teacher's course she will be getting something like Rs. 40 a month. I consider education of more importance.

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**Written Statement, dated the 27th August 1928, of Rao Saheb GULABCHAND HIRALAL and SETH KASHINATH MULCHAND, Dhulia.**

1. There is no dissatisfaction with the state of the law as to the Age of Consent. The dissatisfaction is only confined to educated classes.

2. We are of opinion that some advance should be made on the present law. Amongst our community, the marriage takes place generally at the age of 10 to 12 of girls and 12 to 15 of boys. The early marriages tend to early maternity and the mortality amongst our infants and young women is great.

The number of child-widows in our community is great and their state is pitiable. Owing to existence of child-marriage system, early consummation of marriage and other evil social customs, our community is not progressing well and unless legislation comes to our aid, we are of opinion that no progress will be made. Our community is backward in social reforms and consequently the progress will be very slow. So our opinion is that legislation should be resorted to in order to prevent infant mortality and early deaths of mothers. The raising of the Age of Consent will also prevent to some extent the evil custom in our community of selling young girls for marriage to old and weakly men in our community. The proper age to take up the responsibility of motherhood is 16. So the law of Age of Consent by a woman ought to be advanced.

3. The crimes of rape and seductions are not frequent in our district. The amendment of law made in 1925 had no effect on the crimes of this class. By raising the Age of Consent to 16 I think the crimes of rape and seduction will decrease to a great extent.

4. The raising of the Age of Consent within marital state to 13 years has been so far effective in raising the age of marriage of a girl from 8 years to 10 years in our community. But it has not been effective in protecting the married girls against cohabitation with husbands within the prescribed limit. In our community there is an evil custom of sending married girls to their husbands for cohabitation on the very day of the marriage. The public opinion in our community is slowly awakening about this evil in our community owing to education in our community. Our opinion is that the Age of Consent within the marital state should be raised to 14 years complete.

5. The usual age at which girls attain puberty in our community is 13 or 14. The different ages do not differ owing to different castes and communities but are dependent on the means and circumstances of the family or both.

6. Cohabitation is common in our community before puberty also soon after puberty or before the girl completes 13 years. The cases do not at all come to Court as leaders of our community and generally all men in our community hush up these matters owing to following of the blind customs of our community.

7. In our community Religious Injunctions **अष्टवर्षात् भवेत् कन्या । अत ऊर्ध्वं रजस्वला** and like quotations in Religious Books play most important part in early consummation of marriages. There is general ignorance amongst women of our community who are generally under dominance in religious matters of priests who tread upon their ignorance by quoting religious injunctions. One of us, viz., Rao Saheb Gulabchand Hiralal, is Jain. In the Jain Religion as far as we know, there are no religious injunctions for early consummation of marriages. But owing to some social customs prevailing in both Jain and Hindu Marwari communities the evil custom of early marriage and early consummation of marriage have crept into Marwari-Jain communities. We are of opinion by progress of education in our community, people will not attach undue importance to religious injunctions.

8. Gaona ceremony is always performed in our community as it is a **नैमित्तिक संस्कार** । The ceremony is generally performed after consummation of marriage. The ceremony is generally performed after puberty.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. We are of opinion that at the completion of 16 years of age a girl's physical development is considered enough to justify consummation without injury to her health.

10. In our opinion a girl of 18 years would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. We are not in a position to give details of all injuries suffered in cases of cohabitation before puberty. But it is a common experience in our

community that cohabitation before puberty and before full physical development of a girl though after puberty ruins the health of the girl and brings her to early death and affect the health of her progeny prejudicially.

12. We consider early consummation and early maternity are responsible for high maternal and infantile mortality. The progress of the people is vitally affected by this mortality and intellectual and physical progresses of the people are impeded. So steps should be taken to awaken public opinion to the above evils and also the aid of legislation should be taken to stop the evils mentioned above.

13. There has not been much development of public opinion in our part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925. We are of opinion that the general public is apathetic on this question. The dissatisfaction is confined only to the educated classes and in a vast country like India, this state of things is natural.

14. Women in our community favour early consummation of marriage for children. In our community owing to prevalence of orthodox ideas of religion the desire for a son is very great and so there is a tendency for early consummation of marriage.

15. It is difficult to determine the age of a girl between 12 or 13 or between 13 or 14. During this period even a competent authority may commit mistakes. In the absence of reliable evidence, it is difficult to determine the age of a girl. We cannot suggest any means to remove or minimise these difficulties.

16. We are of opinion that the difficulties will, to a certain extent, be minimised if the Age of Consent is raised to 14 years.

17. We would separate extra-marital and marital offences into different offences. We would recommend the maximum punishment for marital offences should be two years' simple imprisonment.

18. We would not make any difference in the procedure of trial for offences within or without the marital state.

19. We cannot suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion.

20. We consider that the law of fixing the minimum age of marriage would be more effective and the public opinion would be more favourable to this legislation. In our opinion the minimum age for marriage should be 13. Still side by side this legislation of fixing minimum age for marriage, the present law of Age of Consent should be changed.

21. Strengthening of Penal Law is required to aid the progress of Social Reform. No doubt Social Reform movement is required. We keenly feel the want of such a movement amongst our community. The dominance of religious prejudices and long-established customs is such that the Social Reform cannot progress much in our community. Still pioneer efforts are being made by leaders of our community for Social Reforms. Spread of education especially amongst women will be of much use. Attention of leaders should be drawn to this Social Propaganda. By strengthening the Penal Law we are of opinion that the reformers of our community will be encouraged to push on their Social Propaganda.

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**Oral Evidence of Rao Saheb GULABCHAND HIRALAL, Dulia,  
West Khandesh, Bombay Presidency.**

*(Poona, 3rd November 1928.)*

*(Vernacular.)*

*Chairman:* What district do you come from?

A. I am the resident of Dulia in Khandesh.

Q. What community do you belong to?

A. I am a Marwari Jain Khandelwal.

Q. Are there many people of your community in Dulia?

A. There is a very large Marwari community. Altogether there are 1,000 houses in Dulia.

Q. What is generally the age at which girls are married?

A. It used to be 10. But it has now increased from 10 to 12 since the amendment of 1925.

Q. Do you think that consummation takes place before 13?

A. Yes. The girl is immediately sent to the house of the husband, puberty or no puberty.

Q. Is there a very large majority of people, who do this?

A. 99 per cent people do this.

Q. Do you mean to say that the law is broken?

A. Yes.

Q. But no cases are brought to light.

A. The people of my Samaj would not allow me to report any case. Recently a report has been made in one case at Sidpur. The age of the girl is 10 and the boy is 18 or 19. Enquiry is going on and the hearing is yet to begin. There are many people in my community who have 2, 3, 4 or even 5 marriages one after the other. The age of the girl is generally 12. A marriage is soon to take place at Malegon. The age of the girl is 11 and the man is about 48. He has paid 10,000 rupees. I am going to oppose this marriage.

Q. Do you think that this system of early marriage is good?

A. It is very bad.

Q. What remedies would you suggest to stop this practice?

A. The age of marriage should be fixed by law.

Q. What would you like to have, the age of marriage fixed or the Age of Consent raised?

A. The law fixing the age of marriage would be better. If there is a law regulating the Age of Consent no cases will be reported.

Q. What would you fix the age of marriage at?

A. 14. 16 is the ideal age, but people would not act up to it. As a first step it should be fixed at 14.

Q. What age should be fixed for the boy?

A. 18.

Q. Suppose there is no law fixing the age of marriage and there is the Age of Consent Law only, what age would you suggest then?

A. 15. If you fix it at 15, probably people will go up to 14.

Q. During the last 5 or 6 years has there been any development of opinion in your community against early marriages? Are there any people who are constrained to marry their girls early because of the social customs?

A. If there is a law it will surely strengthen the hands of those who want to marry their daughters late. There are people who feel that early marriage is bad. Conferences of my community have also passed resolutions to the effect that there should be no marriage before 12.

Q. Do you think that early marriage results in injury to the girl or her progeny?

A. It does. Two of my wives have died on account of early marriage and early consummation. I was married for the first time when I was 12 or 13 and the girl was 8. She gave birth to three children and two of them died and only one girl was saved. The wife also died within three or four years. I married a second wife who was 11½. She gave birth to the first child at 13 and the second child at 15. The children died and the wife also died.



Now my eyes were opened and I have married a third wife who is 16 and who is living. She gave birth to some children but unfortunately they have not survived. My community has suffered a great loss on account of this evil of early marriage. In my street there are about 30 houses and 12 of them have adopted sons as no children survive.

*Q.* Out of these 30 families how many men are there who have married a second or third wife?

*A.* There are 8 or 9 cases in which second and third marriage has taken place.

*Q.* Is there any disease from which the girls who marry early suffer?

*A.* There is sterility on account of early marriage. The girls suffer enormously. They become lame and often suffer from consumption.

*Q.* Is that your personal experience?

*A.* Yes.

*Q.* What about the children?

*A.* They also die. Those who survive are very weak.

*Mrs. Nehru:* Do those people of your community who have settled outside their own country, Madras, Calcutta or other places, also observe the same customs or is there any difference?

*A.* Wherever they go they take their customs with them. There is no difference. Contact with other people has brought about no change.

*Q.* In the meetings that you mentioned, do women also take part?

*A.* Yes, they are also holding meetings. The Marwari Mahila Samaj which met at Sametshankar fixed the age at 12.

*Q.* How many ladies attended it?

*A.* About 500.

*Q.* Did any come from outside also?

*A.* Yes.

*Q.* Was there anybody against it?

*A.* No. People are not so much educated in our community.

*Q.* Would they like to see the Age of Consent increased?

*A.* Peoples' tendencies are veering round. Our people are afraid of the law and if there is any law they will begin to marry at a later age.

*Q.* What is the condition of women's education in your community?

*A.* There is compulsory primary education in Dhulia. Girls of 6 or 7 are sent to schools.

*Q.* Do girls go to high schools also?

*A.* Among the Marwari community no girls have taken up English. Even men don't take up English. Among 4,000 Marwaris only one has passed the Matriculation Examination.

*Q.* In your oral evidence you referred to a case which was about to start. What is the age of the girl in that case?

*A.* 10.

*Q.* And the boy?

*A.* About 18. This marriage is in the Maheshwari Marwari Community.

*Q.* Who lodged the complaint?

*A.* It was a Brahmin pleader who reported. He was frightened at the girl's plight and took pity on her and reported the case. The girl and the boy were locked up in a room and the pleader heard her cries and took the girl out.

*Q.* What is the age of marriage that you would recommend?

*A.* 14.

*Q.* And the Age of Consent?

*A.* 16.

Q. What age do you suggest for extra-marital cases?

A. 18.

Q. Do you like police interference in these marital cases?

A. I want only the Inspector and I do not want the lower ranks of the police to interfere.

Q. Whom would you give the right of complaint? The girl and her parents do not complain and the cases are not brought to light. Do you want the law as it is, that is, anybody should be allowed to report?

A. If everybody is allowed to complain some people might be put to trouble. Only some responsible man should be allowed to complain.

Q. If committees are appointed for that purpose would that do?

A. They won't be coming forward.

Q. If representatives of all castes are appointed.

A. That will be a good thing.

Q. Do you want them to be nominated or elected by the people?

A. Government should nominate them. No election is possible in this matter.

Q. Up to this time everybody has a right to complain. Have you seen any cases in which malicious complaints have been made?

A. No.

Q. What punishment do you suggest? Would you make the punishment lighter than what it is at present?

A. Unless there is punishment people would not care to follow the law. If some big man is punished it will be very effective.

Mr. Bhargava: Are there any widows in your community?

A. There are.

Q. Is there any widow re-marriage in your community?

A. Only one case has taken place. There is no restriction against it.

Q. If the age of marriage is fixed at 16 the opposition will be the same as it would be if it is fixed at 14. Why not fix 16 therefore?

A. I would like it to be 16, but there will be great agitation.

Q. You have said that the age of marriage be fixed at 14 and the Age of Consent at 16. It will be very difficult to keep the girl and the boy separate for two years. Don't you think therefore that the age of marriage should also be fixed at 16?

A. The time has not yet come for that.

Q. If instead of having a cosmopolitan panchayats as you suggest a senior Sub-Judge makes investigation, would you be in favour of it?

A. Yes.

Q. You have said that investigation should not be done by an officer below the rank of Inspector of Police. If instead of police a magistrate investigates the case, would you agree to that?

A. There is no harm if a magistrate investigates but he should not try the case.

Q. If a complaint is made to the magistrate and after satisfying himself he issued summons you would agree to that procedure?

A. Yes.

Q. Among the Marwari community is the ceremony of gaona performed?

A. Yes; it is within three years. Usually marriages take place before 11.

Q. You have said that a husband should be punished but there should be no imprisonment. If a man of 50 marries a girl of 12 and there is injury would you not punish him with 2 years' imprisonment?

A. Yes, there should be imprisonment.

*Mr. Kanhaiya Lal:* In order to restore good feelings between the husband and wife, would you like that cases between husband and wife should be made compoundable with the sanction of the court?

A. Yes, but if the girl is below 12 the case should not be made compoundable.

Q. If the Age of Consent is fixed at 16 and the age of marriage at 14, would you favour the registration of marriages, giving the names of the marrying parties and their ages?

A. People would object to it.

Q. Would it be more troublesome than the registration of births and deaths?

A. If the municipalities keep the registers I think there is no harm but I am not in favour of the introduction of a system of registration of marriages.

**Written Statement, dated the 14th August 1928, of Mr. M. D. KARKI,  
M.L.C., Honavar (Kanara).**

1. No. There is a clamour for further advancement.

2. In my opinion the provisions of law relating to the Age of Consent as it is should not only be retained but an earnest attempt as the one contemplated should be successfully made. An advance on the present law is essential to build up a strong and healthy womanhood for India. A strong womanhood means a strong nation from every point of view.

3. No. My country is more law-abiding and peace-loving. Rape is almost unknown there. It is to be noted, however, that there are prostitutes in every town and some villages. The amendment of law in 1925 has really put a check on prostitution by girls under 14 years of age. When we speak of strong and healthy womanhood, we cannot leave the prostitutes out of the category of that word.

4. Yes. Now-a-days girls are generally married after 13. The practice has begun to grow far and wide. The consummation of marriage of girls who were married at an age less than 13 is postponed throughout the length and breadth of the country. Public have begun to realise the good effects of the legislation of 1925. It is very easy of speaking that social reforms should be brought about by brisk propaganda by private men and bodies, and that the aid of the legislature should on no account be sought for that purpose. I would sincerely propose that legislative measures are only the sure and safe means to achieve real progress in this behalf.

5. Between 12 and 14 years of age. Yes, it differs. Amongst the labouring and working classes, the girls take a longer time.

6. (1) Cohabitation before puberty in the case of married girls was once rampant. It has almost disappeared. However, rare cases may yet be found here and there.

(2) Cohabitation after puberty was a rule, and is still a rule if the married girl is not below 13 years.

(3) No. None of these cases has seen the court.

7. The practice of early consummation of marriage before puberty is not attributed to any religious injunction. It is said that there is a religious injunction that at puberty there should be consummation of marriage, but the injunction is simply directory and not mandatory. There is a light penalty for the breach.

8. Among high class Hindus Garbhadhan ceremony is usually performed. It always coincides with the consummation of marriage. It is performed generally after puberty. It may take place on the 5th day of attainment of puberty or subsequently on any day after the 4th and before the 17th day of the monthly course of the girl.

9. I am not a medical man to reply to this query. My experience is that puberty cannot be taken as the basis to hold that a girl is a fit one for consummation of the marriage. From 16 to 18 years of age of girls may be taken as the period during which consummation of marriage is beneficial to the female and her progeny. No hard and fast rule can be laid down about the exact age. The age may vary from 16 to 18 according to the constitution of the girls.

10. It is very difficult to answer this point. The illiteracy prevailing amongst the women world of this land has kept them in utter ignorance of their own well-being. Even a girl of 16 under the circumstances now existing cannot in my opinion conscientiously give an intelligent consent to cohabitation with a due realization of consequences.

11. I have come across many cases of the kind. In all such cases the age of the girls was between 12 and 16 years.

12. Yes, coupled with illiteracy.

13. Yes. In the educated circle.

14. No. Now-a-days such ideas have died away.

15. No. The birth registers kept in the villages will greatly help. The accuracy of these registers should be made more guaranteed by strict executive orders or legislative enactments.

16. Does not arise in the face of reply No. 15.

17. For the present the present arrangement, *i.e.*, the arrangement contemplated is satisfactory.

18. Yes. In the case of marital state the trial should not be public. It should be in camera. The imprisonment should be simple only.

19. I think the present safeguards are sufficient.

20. The marriage law will have nothing to do with cohabitation, *i.e.*, intercourses. It may furnish those who will bring about marriages of girls and boys whose ages may prohibit such marriages. The marriage tie, however, will remain as good and sacred and intercourses, *i.e.*, illicit married intercourses will consequently continue if not prohibited by law. So far as I can gather, people of this District are in favour of both the measures.

21. Yes. The progress of social reform by means of education and social propaganda is a thing which is not likely to be had in the near future. To wait till then is to become very cruel to the womankind and its progeny of this land.

### Oral Evidence of Mr. M. D. KARKI, M.L.C., Honavar.

(Poona, 3rd November 1928.)

Chairman : Do you come from Honavar in the Kanara District?

A. Yes.

Q. Which is the headquarters of the Kanara District?

A. Karwar.

Q. To what community do you belong?

A. I belong to the Havik Brahmin community.

Q. Is there any peculiarity in the Havik Brahmins with regard to marriages?

A. They are a conservative and religious people. There is no dowry system amongst them. The girl's father does not pay money to the son-in-law. In very rare cases when the man is poor and advanced in age the girl's parents take money from him.

Q. What is the number of Havik Brahmins in the Kanara District?

A. It was 42,000 in the 1901 census, then it fell down to 40,000 in the 1911 census and in 1921 it further fell down to 38,000.

Q. What is the total population of the district?

A. 420,000.

Q. To what profession do you belong?

A. I am a pleader.

Q. For how many years have you been practising?

A. About 25 years at Honavar. Before that I was a clerk in the Revenue Department.

Q. Have you knowledge about the existing customs in other parts of the country?

A. Yes. I have been President of the District Congress Committee for a number of years and I have come across all sorts of people.

Q. Who are the other classes of people there?

A. The Saraswats and Gowd Saraswats amongst the higher classes, and amongst the lower castes the Halakki Vakkals, who are toilers of the soil, Gam Vakkals, Kari Vakkals who are also farmers, and the Namadaris or toddy-drawers, corresponding to the Blandaris here. There are fishermen too.

Q. What do you think is the marriageable age amongst these classes?

A. The marriageable begins from 5.

Q. Are the girls sent to the house of their husbands?

A. They are sent on ceremonial occasions but they are brought back.

Q. In these cases does consummation take place before or after puberty?

A. After puberty.

Q. At what age?

A. That ranges from 12 to 14.

Q. Are there cases of cohabitation before puberty?

A. They are not so very rampant. But yet there are cases. The practice is not, however, common.

Q. Taking the Havik Brahmins and the Gowd Saraswats are their customs very similar with regard to marriage?

A. In the case of the Saraswats and Gowd Saraswats their girls are married at 14 and 15 and sometimes at 18. But in my own caste it is not more than 14. In Malabar there are some Havik Brahmins, and they have adopted the customs of Nambudri Brahmins and are having post-puberty marriages. Whereas in my caste in British Kanara there is not a single instance of post-puberty marriage.

Q. Do you think that people believe that there is religious injunction enjoining marriages before puberty?

A. There is a belief amongst the people that there is such an injunction.

Q. What is the age of marriage amongst your community?

A. Formerly when I was a boy it was between 8 and 10. Then it rose to 10 and 12 and now it is, as a general rule, between 12 and 14.

Q. Is there Garbhadhan ceremony amongst your community?

A. Yes.

Q. Does it generally take place after puberty?

A. Yes; it is considered that it should be performed after the first menses, but generally it is deferred to one or two years. One year is very common. It does not necessarily take place at the first menses.

Q. What do you mean by your answer to question 20? Do you mean that you will be in favour of both the marriage law and the Age of Consent law?

A. Yes; I think the raising of the age of marriage will defer the period of puberty, and early marriage will accelerate the age of puberty. I believe the fact of early marriage has a mental effect on the girls.

Q. What would you have as the age of marriage for girls?

A. 14.

Q. And for boys?

A. Between 18 and 20.

Q. What would you have as the Age of Consent in extra and intra-marital relations?

A. Personally I am of opinion that it should be 18 in extra-marital cases and 16 in the intra-marital. But there is a section of the community which is very strongly of opinion that it should not be raised to 16. They say that the maximum should be 16.

Q. Would people accept the law of marriage?

A. People will not generally like this piece of legislation. They say that social propaganda should be the only remedy. People do not generally like the marriage law or the Age of Consent law. It is generally due to the poverty and ignorance of the people that they have recourse to early marriage and early consummation. The lower class people cannot keep their girls for long with them.

Q. Do you think that amongst the lower classes, it is an economic question?

A. Yes; the girls are married early and are immediately sent to their husbands' houses.

Q. Do you think that the Gowd Saraswats are an advanced community?

A. Yes; both the Saraswats and the Gowd Saraswats are advanced communities.

Q. You think that the dissatisfaction will be great amongst the lower classes if we raise the age of marriage. Supposing the Age of Consent is raised and there is no marriage law, will they accept it?

A. That will be acceptable.

Q. In the higher classes this will not be opposed because it will not interfere with their daily practice. Generally there is no consummation before 14. Is it so?

A. Girls attain puberty before 14, and there is consummation before 14 also. The girl is also under the belief that she is fit for cohabitation. Under 16 which I propose for the Age of Consent within marital relations certainly there are many cases of consummation.

Q. Will it affect them?

A. Yes; it will affect.

Q. Do you think that out of the two laws the Age of Consent would be tolerated more?

A. The Age of Consent would be disliked to a lesser extent.

Q. Have you seen girl-mothers amongst your community?

A. I have seen girl-mothers at the age of 12 to 15. I have seen two or three girl-mothers at the age of 12.

Q. How many years past was it?

A. It is nearly some 25 years ago, not recently. I generally find girl mothers at 14.

*Dr. Beadon:* In answer to question 11 you say that you have come across many cases of the kind and that in all such cases the age of the girls was between 12 and 16. Would you mind giving us examples which happened within the last 4 or 5 years?

A. I have known many cases; but I must say that early marriage is not the only factor which will bring about maternal or infantile mortality.

Q. What is the condition of these girl-mothers?

A. They succumb easily to diseases.

Q. In these cases at what age does consummation take place?

A. Before 13. At 14 if the girl has a child she becomes weak and she succumbs to diseases and becomes very helpless. Such girls do not also bear children afterwards.

Q. During the past three or four years how many cases like that have you seen?

A. Two or three cases in which the mothers became unfit for child-bearing.

Q. What about the children of these young mothers?

A. In some cases the children are very strong. In families who can afford to spend more on milk and other necessities, the children thrive. But in a majority of cases on account of poverty the parents cannot take care of the children. The mother does not give good milk as she herself only has bad food. So the children become rickety and most of them die afterwards.

Q. Are these cases in the better off people?

A. These are amongst the low class people. Amongst the high class people also such cases do occur.

Q. You say that early marriage is not the only factor for maternal and infantile mortality. Would you say that it is a potent factor or a subsidiary factor?

A. It is a subsidiary factor. I would say that poverty and ignorance are much more harmful.

Mrs. Nehru: You say that this sending of the girls to their husbands' houses is an economic question.

A. Yes; amongst the lower class people.

Q. I thought that amongst the lower classes the girls and boys helped to earn a livelihood, and therefore they were earning units. Why is it then that the parents do not want to keep their girls?

A. Generally the father and mother will work together in a certain field, and the aged children will be in the house. So they want some protection and the parents marry them early and leave them to the protection of their husbands.

Q. Is Garbhadhan ceremony prevalent amongst these people?

A. It is not religiously observed; but there is some ceremony and a feast is given on the occasion.

Q. What is generally the period that elapses between puberty and the Garbhadhan ceremony?

A. The Garbhadhan ceremony is generally performed soon after puberty. There is a notion that after puberty a girl is fit for cohabitation.

Q. Do you think that the law is generally known amongst the people?

A. It is generally known; but I cannot say that every one knows it.

Q. Which part of it is known, the extra-marital or the intra-marital?

A. Both are generally known.

Q. Do you think that so far this law has been effective in preventing early consummation?

A. Yes; it has also served as a check on early prostitution.

Q. Have you come across any cases in which anybody postponed consummation on account of this law?

A. In my own community girls generally attain puberty between 12 and 14, and there are cases where consummation has been postponed on account of this law.

Q. Why is it that though consummation takes place before 13, cases do not come to light?

A. Because these things are not divulged generally.

Q. Then if the age is raised to 16 how will cases come to light?

A. If a girl conceives it will prove cohabitation. There will be fear in the minds of people that when the wife conceives the thing will be brought to light and the man would be punished. There would be that fear.

Q. Would you like social reform organisations to be given power to complain in case there is such a law?

A. Yes.

Q. Do you think that there are enough of such organisations existing in the country?

A. Not in all parts of the country; but only in urban areas like Poona and Bombay. In rural areas social reform organisations are not to be found.

Q. Do you think there will be two or three people in all areas who can be entrusted with this kind of work?

A. I think people would readily undertake the work.

Q. Do you think that there will be any misuse of the law?

A. No.

Q. Would you like the procedure to be the same as it is now?

A. The police should not be given a handle.

Q. To whom would you give the power of investigation?

A. The social organisations should take up the right of complaint and file affidavits.

Q. What punishment would you have?

A. I once thought that there should be no difference in the punishment between the extra-marital cases and the intra-marital cases. But after consulting some of my friends I have come to the opinion that the punishment in intra-marital cases should be lighter.

Q. What punishment would you have in marital cases?

A. Simply fine, and that too not very heavy. After all marriage is a sacrament.

Q. Will you have a light punishment irrespective of the age of the girl? What is the maximum which you would provide? Would you have fine or imprisonment or both?

A. I would like to have fine only irrespective of the age. It will depend upon the Magistrate to fix the fine.

Mr. Bhargava: You say that in the last 20 years the population of your community has dwindled to 38,000. Is early marriage one of the causes?

A. It is due to malaria. Early marriages were prevalent in olden times, and there are people who are very strong who are sons of mothers at 12 and 13.

Q. As regards the prostitutes, may I know the age of prostitutes in the villages?

A. They are not found in all rural areas. They are found in big villages with a population of 1,000 to 4,000.

Q. At what age do the girls begin their life of prostitution?

A. Secretly it is practised at the age of 12 and 13. But cases are not brought to light.

Q. If there is a case against the husband, do you not think in all likelihood there will be estrangement between the wife and the husband and there might be no chances of their coming together again? Why is it then that you recommend fine only? Do you not think that a reapproachment would be equally difficult then?

A. I think fine would be enough in the case of the husband.

Q. Do you think that public consciousness would be aroused a great deal if fine only is imposed on the husband?

A. This piece of legislation is not at all liked by the people. It is only liked by the educated people.



Q. If it is fine only, will it not be regarded as a commercial offence?

A. It will be a check even then. People will know that it is penal.

Q. You say that the evil is rampant in your part of the country. Certainly fine cannot be the right remedy for the evil. What then is your hesitation in arming the Magistrate with powers to inflict imprisonment in suitable cases? The maximum may be fixed at 2 years after 12 as it is at present, and discretion may be given to the Court to give whatever punishment might be suitable.

A. The relations between the husband and the wife would be estranged if there is imprisonment. If it is fine only they will not feel so much.

Q. Supposing the husband is 35 or 40 and injures the girl who is 13 or 14, in that case what will you suggest?

A. In that case the fine may be heavy.

Q. Will you make these cases cognisable?

A. I am not in favour of giving power to the police.

Q. Would you have it as it is now, and say that below it should be cognisable and above 12 non-cognisable?

A. Yes.

Q. And so far as the right of complaint would you leave it as it is?

A. Yes.

Chairman: Would you recommend that a security bond be taken from the parents of the boy and the girl on the first offence and order for separation of the boy and the girl till the prescribed age of the girl?

A. Yes; that can be done; it will not harm anybody.

Mr. Konhaiya Lal: You suggest that after the age of 12 years the cases should be made non-cognisable by the police. Are you not thereby reducing the possibility of detection?

A. Of course there is the possibility; but I think if this work is taken up by social reform organisations it would serve the purpose.

Q. In order to restore good feelings between the husband and the wife would you like to make the cases compoundable?

A. I think compounding should not be allowed in these cases. Some punishment is necessary.

Q. Supposing a boy of 16 has cohabitation with a girl of 13, would you allow such cases to be compounded with the sanction of the Court?

A. In suitable cases I would allow the case to be compounded with the sanction of the court.

Q. Would you allow cases under 12 to be compounded?

A. No.

Q. Are the birth registers maintained satisfactorily in your part of the country?

A. In my part of the country they are regularly kept. In rural areas also they are very satisfactorily kept and there are very few omissions.

Q. What is the system adopted?

A. The village officers or patels maintain the registers, and they send monthly reports to the Mamlatdar of the Taluk. It is checked by the Vaccinator and the Mamlatdar.

Q. Are the names of the children given at the time of the report?

A. The names of the children are given generally on the 12th day after the child is born. The Patel makes enquiries and enters the names of the children. The Mamlatdar at the time of visiting the place verifies the entries.

Q. If we have a law fixing the age of marriage and also the age of consummation, would you have a system of registration of marriages, giving the names of the marrying parties, and their ages to be of use whenever necessary?

A. There is no harm in that.

Q. On whom would you place the obligation to report the marriages?

A. I think the parents should be suitable persons.

Q. Who should have the obligation of maintaining these registers?

A. In rural areas the village officers might be asked to maintain them. In cities they might be maintained by the municipalities who also maintain the register of births and deaths.

Q. Would you also recommend that the registering authority should issue a marriage certificate to the person reporting?

A. Yes; a certificate would be helpful. That will save the age trouble.

Q. Do you think this can be entrusted to the Patels in the villages? Are they literate enough?

A. If the Patel is illiterate the Village Patwari would be able to do it.

**Written Statement of Khan Sahib MUHAMMAD IBRAHIM MAKAN, Sunni Muslim Bohra Landholder in Kolvana, Tanchha and other villages of the Amod Taluka, Broach District, Member of the District Local Board, Former Member, Legislative Assembly for the Mahomedan Constituency, Northern Gujarat.**

1. No.

2. Some of the circumstances which in my opinion justify making an advance in present law are physical deterioration of the communities addicted to child and early marriages and premature consummation.

(a) *Economic strain*.—Since the year 1832 (when there was a famine in Gujarat), there has been progressive rise in the prices of commodities and foodstuffs, and at each successive famine they have jumped up. They reached their climax during the War, and have not fallen to the pre-war level and are not likely to reach that level high enough for a poor country—again. Simultaneously there has been a progressive rise in the standard of comfort, and “wants” of the people have increased. The wages have not advanced in the same proportion as the prices. The saving capacity of the people shows a corresponding decline. The family budget can be balanced with difficulty, and deficits are not uncommon. Disintegration of joint families is going on apace, and the struggle for existence is becoming keener day by day. Owing to the demands of professional and vocational training the age at which male members of a family become wage-earners has risen. The paterfamilias who is the only bread-winner in a normal family can meet the varied and various “claims” of his own children with difficulty, if not worse, and he does not think it a blessing to be burdened with the maintenance of the children of sons and grandsons. The feeling is growing that sons and grandsons should, as far as possible, be bread-winners first and fathers of families afterwards. It is felt that virility is preferable to fecundity, and amongst the politically-minded sections of the people the idea is growing that it is the duty of every native of India—and not of particular races or communities—to rear citizens healthy and physically strong and capable of rendering military service. It would not be possible to exhaust all the circumstances. It is a sign of the times that early marriages and early consummation are unpopular.

I am not recording my individual opinion, but I am voicing the opinions of the large agriculturist Sunni Bohra community which forms the bulk of the Muslim population in my district. And, if I am permitted to say it, the Hindu population is at one in decrying the evil.

3. Crimes of seduction or rape are not frequent in my part of the country—the other question do not survive, as the evils indicated therein are rare in my part of the country.

4. The amendment of 1925 has been effective in the directions indicated in (1) and (2).

As regards (3), putting of marriage beyond 13, the law has been in force for such a short period that it is difficult to say that the marked tendency to raise the age of marriage is due to the amendment of 1925 or the awakening conscience of the people.

5. (1) In my part of the country girls are generally taken to have attained puberty when they menstruate. (2) No.

6. (1) No.

(2) In several castes cohabitation is common soon after puberty, and if the girl menstruates before 13, and if there is no disparity of age between the couple, first cohabitation takes place before the girl is 13. These cases do not come to court.

7. Barring a few very orthodox Brahmin castes, the practice, wherever it exists, is not attributed to religious injunction. The practice rests on a bad custom. I am not qualified to speak on religious injunctions of any community, but it is notorious that reformed scholars say that the orthodox interpretations are wrong, and orthodox scholars pay back the compliment.

8. Gaona or Garbhadan ceremony is usually not performed in Gujerat, and not at all amongst Mahomedans. It is an orthodox Bramanical rite performed in Maharashtra. I am told it is performed after first menstruation and is anterior to consummation.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Weak girls often menstruate early. The age of 16 is the minimum in opinion for a girl of normal health.

10. At 16.

11. Watch any ceremonial processions or festivals where females congregate, watch the females of certain communities (e.g., Bhatias in Bombay) in which the practice prevails with the babes in their arms, and you see the consequences. The average height of males 5'-3" and the average height of females 5' and under in such communities speak to physical deterioration and consumption and other wasting diseases prevalent amongst them tell their own tale. I regret I, a layman, cannot give, the details asked for.

12. Yes.

13. Since 1925 there has been further development of public opinion in my part of the country in favour of an extension of the Age of Consent owing to several social reform movements, but in communities susceptible to such agitation, though it is not general. The lowest strata have not been touched. They do as their forefathers did follow the bad custom if it exists, and do not practise premature cohabitation if it does not exist.

14. No.

15. Yes. Such communities (mostly Hindu) as maintain horoscopes of their children can furnish reliable evidence on the point, if they choose to. As for others, the Birth and Death Registers have to be depended on, and School Registers, if the girl has attended a school. Birth and Death Registers are maintained by Municipalities in cities and by village officers in rural areas under orders of Government in the Bombay Presidency, and penalties have been prescribed for not reporting births and deaths. The entries, in the case of births are made immediately after birth, but a child is named for the first time a week or two after the birth. So all that is registered is A (father's name), date of birth and male or a female child. Illiterate parents of the lowest classes make a mess in identifying the child, if they had many and lost some children. One suggestion I can make to minimize the difficulties in a country where the State has to maintain such records for a majority of the population is that the first entries

of births should be supplemented with the names of the children after they have been named and initiated by a responsible officer of the town or village.

16. Yes; because more pronounced data for medical examination and oracular inspection would be available.

17. Yes; I would suggest higher punishment for extra-marital offences, because over and above brutality there are sordid motives, cheating and a lot of inhuman conduct in the commission of the crime.

18—19. I would leave these and the question of punishment to lawyers.

20. In my opinion penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. The alternative would be in consonance with public opinion in my part of the country.

21. The nation that is hastening on the road to Swaraj ought to accelerate physical fitness for martial services expected of the citizens. Penal measures would give much needed sanction and fillip to social reform by means of education and social propaganda. Owing to the fundamental changes in the political constitution of India, there ought to be a Spartan resolve to have citizens fit to bear martial burdens.

### Oral Evidence of Khan Sahib MUHAMMAD IBRAHIM MAKAN.

(Poona, 3rd November 1928.)

(Vernacular.)

*Chairman:* Do you belong to Broach District?

A. Yes. I am Suni Bora Patel.

Q. If girls are married below 14 or 15 is there any injury to their body or to their progeny?

A. If a girl is below 14, there is injury.

Q. What age would you recommend as safe for consummation of marriage so that there may be no injury?

A. 14-15 and child-birth should be at 16 or 17.

Q. Would you like to have a marriage law fixing an age for marriage at 14 or 15?

A. Yes, it would be better. It is sometimes an economic question. If a man has got two daughters he can marry them together but if he is to marry them separately it will be more expensive.

Q. Would you prefer the law of Age of Consent?

A. Yes, it should be raised to 14 within marriage.

Q. Are there many cases of cohabitation below 13?

A. Yes, that is among the Hindus. These cases do not come to court because the law is not known.

Q. Does cohabitation take place before 12?

A. No.

Q. If the Age of Consent is raised to 14, would people favour it?

A. Yes.

Q. What measures would you suggest to bring cases to light?

A. There should be a cosmopolitan society in every town and every village who should report these cases to the proper authority. The members of this society should be elected by the people. There should be a law like the Village Panchayat?

*Mrs. Nehru:* Do the people think it is against religious injunction to have legislation fixing the age of marriage?

A. Shariat says that when a girl reaches balugh she should be married and as there is likely to be some injury if she is married at such age, the age of marriage may be fixed.

Q. Have you taken the opinion of maulvis or maulanas?

A. No, this is my personal opinion. If the husband is of a good age or he is marrying for the second time, then they allow the girl to grow.

Q. If the husband is of a higher age would they allow the girl to grow up to 17?

A. Yes.

*Mr. Bhargava:* You want the Age of Consent in marital cases to be raised to 16?

A. No, it should be 14 but if the girl is weak it should be 16.

Q. If the medical opinion is that if consummation takes place before 16 the girl as well as her progeny suffers, would you agree to raise it to 16?

A. On our side the girls of 14 or 15 are strong enough.

Q. Girls on your side are strong enough but the law is for all communities. If the medical opinion is that consummation below 16 would be injurious to the mother would you still have the same opinion that girls should be consummated at 14?

A. Yes.

Q. Would you want the police to investigate the cases or the magistrate?

A. The magistrate should investigate them.

Q. Would you give the right of complaint to everybody as it is at present?

A. Yes.

Q. Would you make the cases compoundable with the sanction of the court?

A. Yes.

Q. If the girl is below 12 would you retain the same law as it is at present?

A. Yes.

*Mr. Kadri:* You are the leader of the Borah Community in the Broach District?

A. Yes.

Q. At what age do marriages take place in your community?

A. Among the uneducated people marriages take place at any age say 4, 5, 6 and among the educated classes they do not take place very early.

Q. When is the Rukhsati ceremony performed?

A. Generally it is 2 years after the girl attains puberty. They never send her before puberty.

Q. What is the age of balugh?

A. 13-14.

Q. There is no injunction in the Shariyat that marriage should take place at a certain age. It is not so?

A. According to Shariyat consummation of marriage should not take place before balugh.

Q. If a girl is married by 'anybody' except her grandfather or father before puberty, she has a right of repudiation after attaining puberty. Is it so?

A. Yes.

Q. It means that unless she has reached balugh she should not be married.

A. No.

Q. Would people like that there should be no rukhsati ceremony before 14 or 15?

A. Yes.

Q. You have experience of municipalities. Do they keep birth and death registers?

A. Yes, but names are not given at the time the report is made. If there are several children it is difficult to find out the particular child required. If there is a law that after the first report a second report should be made at the time the name is given, it will be more satisfactory.

Q. When is generally the name given?

A. After 8 days.

Q. Was any meeting held among the Suni Boras to discuss the marriage and consent laws?

A. No.

Q. Was there any informal discussion?

A. Yes.

Q. Do you know what is the opinion of Hindus?

A. Yes, they are for an advance. Only six months ago a man of 55 married a girl of 9 years; public opinion was against it and they discredited him.

Q. Do you want child marriages to be prohibited by law?

A. Yes.

Q. You have said that if there is a panchayat in the villages it will bring cases to light.

A. Yes, it will be good.

Q. Is there any village panchayat in your District?

A. Yes, there is a panchayat whose members are elected by the people.

Mr. Kanhaiya Lal: Are you an agriculturist?

A. Yes.

Q. You know there is a good deal of maternal and infantile mortality.

A. Yes. If the age of marriage is fixed at 14 it would protect girls. Our girls at the age of 14 or 15 are very strong.

Q. If the age is fixed at 14, do you think the next generation will be strong?

A. Yes.

Q. If it is fixed at 16 will there be any dissatisfaction?

A. Yes, there will be a great deal of dissatisfaction.

Q. You recommend that as a first step it should be 14 but it may be raised to 16 gradually?

A. Yes.

Q. If there is a law for registering marriages, i.e., a report of the marriage being made to the prescribed authority giving the names of the marrying parties and their ages, would it serve any purpose?

A. There is no harm.

Q. Who should keep the register?

A. Kazis already keep it.

Q. Kazis do not keep it everywhere. Do you think it will be useful in stopping early consummation?

A. Yes, early marriage and early consummation will be stopped for fear of law.

**Oral Evidence of Dr. Mrs. YAKIL, King Edward Memorial Hospital, Poona.**

*(Poona, 3rd November 1928.)*

*Dr. Beadon:* You are in the King Edward Memorial Hospital, Poona?

*A.* Yes.

*Q.* Where have you worked otherwise?

*A.* I have worked for two years in Cama Hospital, Bombay; for two years in the Civil Hospital, Belgaum and 5 years in Dhrangadra State, Kathiawar.

*Q.* Is the last mentioned a maternity hospital?

*A.* It is a hospital for all general purposes including maternity hospital.

*Q.* In maternity hospitals in these places, have you noticed in your experience girls about 15 or under becoming mothers?

*A.* I find 15 complete.

*Q.* Have you found any difference in the labours of these girls when compared with girls of 17?

*A.* Yes. They have lacerations and injuries to the parts. It is more common with younger girls.

*Q.* What about the infants?

*A.* I think they are very weak and of small weight about 3½ lbs. and 4 lbs.

*Q.* What class of women do you get generally?

*A.* We get all classes.

*Q.* Do you think that these children born to these mothers thrive afterwards?

*A.* I think many children die during the course of the first year on account of the weak health, and the mothers are not able to take care and nurse the children; I don't think they can nurse the children when they are young.

*Q.* Do they get osteomalacia?

*A.* I have seen many at Cama Hospital in Bombay and also seen many here in Poona as well.

*Q.* At what age do you generally find this?

*A.* About 20 years old.

*Q.* From what name do you get the history of this osteomalacia?

*A.* After the first or second delivery they give the history.

*Q.* What is your opinion about the strain of labour?

*A.* It is the strain of labour that tells more on a young girl.

*Q.* Do you think that a girl of 14 or 15 is more strained than a girl over 17?

*A.* Yes. I think so.

*Q.* What age would you fix for marriage?

*A.* At least 16, so that they don't have their first baby before they are 17.

*Q.* Have you noticed tuberculosis in these girls?

*A.* Yes. Those who are young I have noticed this. Tuberculosis comes sooner in them.

*Q.* Have you a record of cases of 15 and 16?

*(Witness gives Statistics.)*

*Mrs. Nehru:* You have experience of the hospital work here and in Bombay. Did you find any difference in the ages of girls who came for delivery to the hospitals in the different places?

A. I have noticed more young girls here in Poona. I have seen young girls in Cama Hospital and in J. J. Hospital. There the girls are much younger than what I have seen in Poona. I have never come across many young girls in Poona.

Q. Could you tell us the percentage of girls below 16 in Bombay?

A. No. I cannot tell you.

Q. Do you find that these hospitals are becoming popular with all classes with the well to do as well as with the poor?

A. Yes.

Q. In Poona do many come from round about the villages?

A. Yes, they do.

Q. Is the infant mortality very high here?

A. At least not in the hospital.

Q. Do you find that the children born later to young mothers are stronger than the children born in the early period.

A. They are weaker.

**Written Statement, dated the 13th August 1928, of Mr. R. P. PANDIT, M.A., LL.B., Assistant Commissioner, Southern Division, Belgaum.**

Before I proceed to answer the questionnaire, I propose to record a few general observations in order that the views set out in the answers may not be misunderstood. It cannot be denied that working for social reform through legislative agency is often the quickest and easiest way of effecting reform. This way however presupposes the existence of a homogeneous society, the bulk of which is willing if not eager to receive and improve the reforms offered. Where such homogeneity does not exist, efforts should first be made to secure it. With regard to the question now under consideration the position is this. A generation of social reformers by dint of vigorous propaganda have succeeded in raising the public conscience to the inequity of child marriages. As a result, the ancient marriageable age limit of 8 has not only disappeared but post puberty marriages have come to be tolerated. Consummations of marriages below a particular age are avoided. This is the progress so far achieved. Consolidating this progress in a legal enactment would appear necessary to guard against retrogression. But to legislate for further progress in the hope that it would be welcomed, would be unwise. The strata of our society are in different stages of progress and development and to prescribe a common remedy for all would result in inconveniences and cause discontent. It is therefore submitted that the law should confirm what is common to the greater part of the society and await the results of further efforts of social reformers. It is therefore fairly obvious that the Age of Consent for marital relations may be raised to 14. A few orthodox Hindus will probably agitate against it but by far the greater portion of the society will acquiesce in it. It is in my opinion impracticable to enhance the non-marital Age of Consent beyond 14.

1. It seems to me that the law as to the Age of Consent as contained in sections 375 and 376, cannot, owing to the very nature of the society to which it is applicable, cause discontent grave enough to invite amendments nor is any genuine discontent discernible. The fact is that the age limits prescribed cannot shock any but the most orthodox religious conscience or disturb vested interests say for example in the traffic of girls for immoral purposes. The idea that wedded life should be synchronous with the first signs of puberty though is in us. The limits prescribed in sections 375 and 376 do not seriously run counter to what has now become common usage. In actual practice however a higher limit than the one prescribed



by section 375 for intra-marital relations, has been reached. Most of the advanced Hindu castes not only favour post-puberty marriages but actually promote them. The less advanced (not backward) castes have not escaped this wholesome influence; even among them post-puberty marriages though not actually advocated are not visited with social punishments. Among the socially backward castes (Lingayats, Marathas, Shimpees, etc.) orthodox Brahmin influence has been responsible for creating public opinion in favour of pre-puberty marriages. Post-puberty marriages though permitted are not considered *a la mode*. The desire to become Brahminised has appreciably influenced these castes in favour of pre-puberty marriages. This however is a recent development. Puberty being normal between 12 and 14, the Age of Consent at 13 has done very little or practically nothing to effect any reform. The idea is that the first appearance of puberty enables girls to bear the responsibilities of motherhood and as this stage is generally reached at the completion of the 12th or commencement of the 13th year. The age limit prescribed by law does not cause any noticeable inconvenience.

2. The existing limits affect the following classes of persons:—

- (1) unmarried girls under 14 who eventually marry;
- (2) unmarried girls under 14 who do not normally marry, and
- (3) married girls under 13.

It would in my opinion be ridiculous to hold that an Indian girl of 14 was unable to give an intelligent consent to intercourse within or without the marital stage. The law can of course create such a fiction and in the interests of eugenics and the growth of a healthy nation, it is desirable that such a fiction should be created but its extension beyond 14, would perhaps be found impracticable. The intra-marital limit cannot for obvious reasons be pitched higher than the extra-marital limit. It is this peculiar feature of our society that militates against a higher limit than 14. There is however nothing to prevent our having an uniform limit for the two cases. The weight of experience is that offences of rape are, oftener than not, committed after the victims are well past the present age limit. I regret I have not the means to collate the necessary statistics but I am fairly certain that were statistics of rape in the Bombay Presidency collected they would establish the correctness of my statement. I have been a fairly busy Sub-Divisional First Class Magistrate these 10 years and it was my lot only once to try a case in which the victim raped was below 12. The other cases of rape (4 to 5 in 10 years) that I have had to try concerned not girls but fully developed women. The experience of other Magistrates, I know of, is not dissimilar to mine. Even among the wild Bhils of Khandesh cases of girls under 14 or pre-puberty girls being raped were not in evidence. It may therefore be safely assumed that the danger point is reached well after the girl attains puberty. That consummation should be deferred till a complete physical development is reached would be a counsel of perfection and in order that legislation may not be a dead letter it is important to investigate whether or not the social environment necessary to the successful working of a higher limit exists. The case of girls who do not normally marry is the chief obstacle to the imposition of a higher limit. The class of hereditary prostitutes generally bring up their daughters in their own ways, as soon as may be possible after the first menstruation which is usually between 12-14. The Devdasi class (Murlis, Sulis and Basvis) generally possess strong physique and the sordid environment in which they live, hasten puberty and whet their desire to lead an independent life soon after. With this class of people it is customary to levy a large price for the "virgin's honour". Some time is therefore spent in the quest of a dissolute man, prepared to pay good price for the virgin's honour. These preliminaries take some time and when finally the infamous bargain is struck it is generally found that the willing victim is in many cases over the age limit. Raising the limit in such cases (extra-marital) is fraught with grave consequences. However ignoble the profession, however, disgusting the subject it should be recognised

that in fixing a higher age limit we would in effect retard the chances of these public women earning an independent living. Blackmail and extortion would be rife. The real age may be concealed. Few can definitely mark off a fifteen years old girl from another aged 16 and visitors may be encouraged to seek their society and then held up to blackmail or in the alternative to a criminal prosecution for rape on a girl under 16. The girls of this class would no doubt be willing accomplices of their designing relatives and pimps. This is not an imaginary danger. The chances of earning a living being deferred for some years from the time when they consider themselves to have been fully equipped for it, they must naturally seek an illegal outlet. For inveigling unsuspecting persons the law does not punish them as accomplices or abettors. In these circumstances it can hardly be suggested that the young prostitutes could be relied on to await their maturity as understood by section 375 and deny themselves the chance of making some money by soliciting customers or by deputing pimps to do this for them. I have at times received applications from Basvis and Sulis—the Devdasis of the Karnatak—requesting permission to ply their trade as they had passed the age limit prescribed by law. Such petitions are never answered but they indicate the anxiety of these wretched women to start life as soon as they can.

So long as society cannot provide for the waiting stage prescribed by law so long will the propriety of raising the age limit to 16 remain dubious. If therefore it is impolitic to raise the extra-marital Age of Consent there can be no question of raising it for the marital stage only. This is an unfortunate position but one which ardent social reformers cannot ignore. I recognise that cohabitation should be postponed till the girl reaches full physical development but we cannot have a higher limit for marital intercourse and a lower one for non-marital intercourse. But there is no reason why there should not be uniformity. In all quasi-social legislation we can only hasten slowly. Though I can fully appreciate the suggestion that the limit of 16 should be imposed on extra-marital connections in the interests of the girls themselves, I am not convinced that such legislation would be practicable. As we cannot reach the ideal we should at least strive for it and have the age limit of 14 for all cases. This limit in marital intercourse cannot, I consider, lead to any discontent. Marriages after 14 are now common enough among advanced Hindu castes and with the backward castes post-puberty marriages are allowed; the tendency towards pre-puberty marriage is much too recent to merit any consideration.

Agitation would only be confined to the super-orthodox and even with them it would more be a matter of abstract doctrine than anything else. The ancient doctrine which fixed the age of 8 is honoured more in the breach even by the orthodox and the social evolution during the last quarter of a century having appreciably mobilised public opinion in favour of post-puberty marriages, the assertions to the contrary by a few orthodox men should not be allowed to arrest the course of a wholesome piece of legislation. Fixing the age limit at 14 would in effect confirm the present day practice. In the present stage of society I consider that this limit is the only practical concession which the legislation can and should show to public opinion. Age limit higher than 14 would operate harshly in the case of Devdasis and similarly situated castes. I submit we cannot legislate on an assumption that such castes do not exist, or do not count. To induce in these castes a higher standard of life would certainly be a piece of excellent social work, but it is hardly the province of law. These are my reasons for suggesting an uniform age limit of 14. To accelerate this reform by providing artificial aids to it may probably be justified in the case of a homogeneous society. The remedy however would be disastrous when applied without modifications to the different strata of the present day Hindu society.

3. Cases of rape or seduction are not frequent occurrences in the Karnatak. But when they occur it is usually found that the victim is well past the age limit. My experience is that pre-puberty rapes are rare. No special

measures in my opinion are however necessary. Statistics may perhaps indicate which way the truth lies but the evil of pre-puberty rapes does not exist in the Karnatak. By post-puberty rapes I mean rapes after 14. It is difficult to reconcile this term to the age limit. Generally it may be said that though a girl attains puberty between 12-14 she is not, unless well developed, seduced by men. A normally developed girl at 14 is generally conscious of her responsibilities and may be trusted to take care of herself. If she is made a victim of circumstances beyond her control the ordinary law is adequate to protect her. For reasons mentioned *supra*, we cannot have different age limits for each of three classes mentioned in answer to question 2.

4. I believe I have sufficiently dealt with the question in my answers to the preceding three questions. Long before this amendment became law society has been moving in the direction of post-puberty marriages. Marriages are now frequent between 12-14 and as the consummation takes place a few months after the marriage, it would appear that consummations at 13 are rare. The census figures of 1921 for the Belgaum District (Imperial Table VII) show the age distribution of marriages for a total Hindu population of 823,970. This is as follows:—

Age.	Married males.	Married females.
0—1 . . . . .	69	122
1—5 . . . . .	416	2,698
5—10 . . . . .	1,957	15,487
10—15 . . . . .	7,285	28,810
15—20 . . . . .	12,003	21,794
20—30 . . . . .	53,015	57,916
30—40 . . . . .	52,830	39,871
40—50 . . . . .	33,759	19,070
50—60 . . . . .	19,744	7,442
60 and over . . . . .	12,815	2,676

These figures speak for themselves. Figures for other districts are not dissimilar. It would be interesting to carry on the study by endeavouring to distribute the figures over the different castes which constitute the Hindus of Belgaum District. This however is not possible. The impression that marriages are by far most common below 13 is incorrect. Even the orthodox hardly celebrate marriage below 12 and seldom permit intercourse before 14 to girls. Despite all assertion to the contrary, our society has reached this stage. For the backward castes post-puberty marriages are not novelties.

The movement which has effected this advance can certainly be relied on to persevere in its efforts for further reform and social forces which are now at work fully justify this optimism. The aim of law should be to consolidate the successes achieved by social reformers.

5. The age at which girls attain puberty is generally between 12-14. The exact age depends on the physical condition of the girl. There are no noticeable peculiarities in the different castes in this respect. Poorer girls with little nourishment mature later than others. That is all.

6. Cohabitation before puberty is uncommon in the Karnatak. Cohabitation soon after puberty used to be the general rule some years ago, but with the advance of reform this custom is dying out. Cohabitation before 13 even if puberty is attained, is not common. Even the most unsophisticated person now realises that such a girl is more of a child than a woman.

In the Karnatak a man whose wife has not attained puberty is never allowed to keep company with her. Soon after puberty, this was allowed usually on the 5th day after the first appearance of the menses. It used

to be said, I do not know on what authority, that consummation was essential if the girl was to take part in all the household duties, especially those connected with the worship of the family god. This custom is dying out and is fully dead so far as advanced Hindus are concerned. With the backward class it is more in the nature of imitating the orthodox Brahmin than anything else.

8. The "Garbhadan" ceremony is performed in the Karnatak. It is the ceremony which immediately precedes the commencement of marital intercourse. The ceremony is necessarily performed after puberty but not before the wife is considered physically fit to live with her husband.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity and it is not easy to prescribe a definite age at which the latter is invariably reached. Probably 16 in some cases. Any attempt to fix the age limit with reference to the physical development would, I consider, be futile since an infallible standard can hardly be hit upon. Public opinion has however long been reconciled to the age limit of 14 and in actual practice the limit is often exceeded. Opinions will differ as to the exact age when consummation without injury to the health of the girl or her progeny, may be permitted and though the ideal would seem to be somewhere between 16-18 in the case of normally developed girls, it would not, I submit, be practicable to legalise this ideal. I have indicated the difficulties and my submission is that we should fix the age limit in which the general public can be shown to have acquiesced. The danger of precipitating things in this direction, specially in the case of potential prostitutes, can never be overrated.

10. See answer to question No. 2.

11. No. I have not come across such cases.

12. Not solely. Economic factors, unhygienic housing, paucity of medical relief, absence of a well regulated propaganda in favour of birth-control, are some of the contributing factors.

13. See answers to questions 1 and 2.

14. I am unable to supply any answer. But in my own community—the Gaud Saraswat community—the consensus is against early consummation of marriages.

15—16. There should theoretically be no difficulty in determining the age of girls. We have in our rural and urban areas birth and death registers which can always be relied on. The integrity of these registers is generally above reproach; it is conceivable that the importance of these registers has not adequately been realised by wandering tribes and by the low caste Hindus, but the indifference of these castes can be overcome by vigilance of the Patil. In fact higher administrative officers in the course of their tours in villages see that these registers are maintained up-to-date. No special measures beyond emphasizing the need of attending regularly to these registers seem necessary. In actual practice I have had no difficulty whatever.

17. I would leave the present classification and punishment unchanged, and even with an uniform Age of Consent for extra-marital and intra-marital relations no change in the scale of punishments now prescribed, seems necessary.

18. The present procedure adequately prevents excessive inquisitorial investigations concerning intra-marital relations and no change seems necessary.

19. If the present age limit for extra-marital relations is maintained no special protection is necessary. If however the limit is raised even by one year some protection to the male section of the population would indeed be necessary. I am unable to suggest what this should be.

20. My opinion is that the law should confirm and legalise what is usual for society to observe. It is therefore immaterial how this is done. Whether you penalise marital relations below a particular age by amending section 375 or by prohibiting effective marriage below that limit in a

special act would, I consider, matter little. Both would be equally effective. Moral turpitude is more easily associated with breaches of the Penal Code and therefore public opinion would undoubtedly favour a special legislation. Legislation prohibiting marriages below 14 would have the added advantage of banning unseemly enquiries by the courts into the question whether a married girl had or had not been raped by her husband. The marriage itself would be punishable.

21. I beg to refer to my answers to Questions 1, 2, 3 and 4.

### Oral Evidence of Mr. R. P. PANDIT, M.A., LL.B., Assistant Commissioner, Southern Division, Belgaum, Bombay Presidency.

(Poona, 3rd November 1928.)

*Chairman:* Are you the Assistant Commissioner, Southern Division, Belgaum?

A. Yes. I belong to the Provincial Executive Service. I was directly recruited by nomination.

Q. To what community do you belong?

A. I am a Gaud Saraswat.

Q. You divide the community into advanced and backward. What do you think is the proportion of the advanced to the backward?

A. I could not give you that. My idea was to divide it into urban and rural areas.

Q. Even then there are advanced and backward communities.

A. There are very few.

Q. From your central statistics it can be said roughly that girls married below 15 are about a quarter of the total number of females amongst the Hindus in Belgaum District?

A. Yes.

Q. You seem to think that the age at which a girl may be safely a mother is a matter of doubt.

A. Yes.

Q. If the medical opinion is that a girl cannot be safely a mother without detriment to herself and her progeny below 16, preferably 18, then would you modify your opinion?

A. Yes. I would.

Q. But I think you have still a further thing! You have said that though it may be 16 and 18 that ideal is not attainable. But then from that you seem to deduce that the law should only go as far as the people can acquiesce in that is because the society is not homogeneous. Is that your reason?

A. Yes. That is my reason.

Q. From that point of view you say that the law prohibiting *sati* was very much against public opinion but it was directly against the peoples' wishes. Was it not so?

A. But, those days were different. At that time there was no public opinion worth the name.

Q. You know that everybody was against prohibiting *sati*. I think very many people except Ram Mohan Roy said that *sati* should not be stopped.

A. I don't think the analogy will apply here.

Q. Now the society not being homogeneous what has that got to do with passing of a law?

A. Because the law will apply to the whole society. But even amongst the backward in rural areas, Lingayats and such others sometimes contract marriages at 10 or 11 and very probably the law will be very proper for them.

Q. At the same time you suggest a marriage law up to 14. Will it not trench on them?

A. Not to a large extent.

Q. Up to 15 is there no danger to a quarter of the population?

A. Even then I don't think the change to 14 will affect them very appreciably.

Q. If as you say 75 per cent. of the people are ready for an advance then why not have the 25 per cent. also with us?

A. If the medical opinion is unanimous on that point and if we can show that they suffer to a very large extent then I would go to 16, but in that case the evil should be great. I have therefore only to be shown that the evil is a very large one and the suffering is great and if these conditions are allowed I will go to 16. On these conditions I would modify the age to 16.

Q. You have said in one place that it is ridiculous to think that a Hindu girl of 14 cannot give an intelligent consent within marriage and outside marriage. May I tell you that you are the only person from whom we have got this opinion? I want you to justify this.

A. I cannot justify this beyond my opinion. I don't think I can prove it in any way. I think she is able to give consent at 14.

Q. Is that based on authority?

A. It is my own impression.

Q. Are you aware of the fact that early maternity and early consummation are deleterious to the health of the girl? If such is the case then I suppose you would raise the age to 16.

A. Yes.

Mr. Kanhaiya Lal: If there is no proper ossification till the age of 18, then would it be safe to allow maternity before that age?

A. It wouldn't be safe at all.

Q. It is said that there is a very high percentage of infant mortality in the country. Have you got any figures with you?

A. I haven't got any figures.

Q. If we are told by medical men that the infant mortality is high, say about 25 per cent., and if we are further told that there is a high maternal mortality too, and the children of tender mothers only weigh about 4 to 5 lbs., do you not think it is a matter for serious consideration, requiring some early remedy?

A. I think 14 is a fairly common age now-a-days and if the infant mortality is widespread, I would have it at 16.

Q. Will you make all these cases cognizable?

A. No. I won't. I would make them non-cognizable and below 12 I will make them cognizable as hitherto.

Q. Would you recommend social reform associations or women associations existing in the country to take up these matters and to watch and look after these cases and to make reports?

A. That can be done in big cities. That will not be possible outside big cities.

Q. Supposing we have a vigilance society both in cities and rural areas or cosmopolitan panchayats would these be useful?

A. In theory they will be helpful but in practice I don't know how far it will work.

Q. Would it be difficult to organize a panchayat of that character?

A. I believe so; because even the existing panchayats are not functioning as they ought to.

Q. If a provision is made that marital cases should be investigated by gazetted officers, say Circle Inspectors or Deputy Superintendents of Police, then would you make these cases cognizable?

A. Even the investigation could be very safely handed to subordinate Magistrates of the 2nd class or 3rd class.

Q. Do you think they will be able to find time to make enquiries.

A. Yes. I mean if they go to villages and if the parties are willing to vindicate justice, then it is possible. Deputy Superintendents of Police can be safely entrusted with this work.

Q. As a further safeguard would you advise that every Magistrate in marital cases should be required to make a preliminary enquiry before issuing a summons or warrant to the accused to eliminate malicious cases as far as possible?

A. If the matter is entrusted to the Deputy Superintendent of Police the Magistrate's enquiry is no use at all.

Q. Would you prefer matrimonial courts to try these cases instead of ordinary courts for speedy trial and inspiring better public confidence?

A. I think that will be all right. That depends upon the selection of the people who constitute the bench. If suitable men could be induced to sit with the Magistrate that will be good.

Q. Do you think this system of matrimonial courts will be preferable to the present system of trials by the existing courts?

A. Yes.

Q. Would you like to make these cases compoundable with the sanction of the magistrate in order to ensure good feeling between the wife and husband?

A. Yes.

Q. As an auxiliary to marriage legislation and the legislation for fixing the Age of Consent, would you recommend the system of registering marriages giving the names of the marrying parties and their ages.

A. I think it is quite necessary. The responsibility should be on the persons who now maintain the birth register.

Q. Would you place the obligation of reporting the marriages on the priest or on the parents or guardians of the parties?

A. On the parents or on the guardians of the marrying parties.

Q. Do you think that the system of registering births is working satisfactorily in the rural areas?

A. Yes, fairly.

Q. Can you tell me whether there is a law that this should be reported?

A. I think there is no statutory rule. It is rather under the executive orders of the Land Revenue Code.

Q. Would it improve matters if we make a provision in the District Boards' or Local Boards' Act about it?

A. The Boards haven't got any agency in the villages.

Q. Then would you give this power to the executive authority.

A. You might give under rules under the Land Revenue Code. The obligation to maintain such a register is laid down by an executive order under section 14 of the Land Revenue Code.

Q. You think a similar rule should be laid down for marriage registration.

A. You can amend the Village Police Act for this purpose. Of course the constable is not responsible for this but the Head of the Village Police will be responsible.

Q. So far as cities are concerned you can amend the City Municipal Act. Is that so?

A. Since the Municipalities are required to report the births and deaths, a similar provision may be inserted about marriages also.

*Mr. Kadri:* You have considerable experience of the conditions in the District. With that knowledge do you think any of the Social Reform Associations or Vigilance Societies or cosmopolitan panchayats that are recommended would be able to do any effective good?

A. In practice, I doubt.

Q. And you would not like any interference in the case of marital relations.

A. If you get good persons on the bench I would agree to it.

*Mr. Bhargava:* Can't you tell from your Census Report the number of girls that are married below 13 or 14 out of the number of 45,000 married girls?

A. No.

Q. That means that if the population of girls below 15 is by itself say 50,000 then we can reach the conclusion that it is a cent. per cent. marriage. Is that not so?

A. Yes.

Q. Out of the population of 115,886 girls what do you think the percentage will be approximately?

A. I can't give you any idea. I will collect the ages for married men and girls in the villages and send you a statement.

(Witness has promised to send a statement.)

Q. You have been pleased to say that you have got experience in villages and you say that a girl at 14 or 15 is quite healthy for maternity. But have you seen girls in villages who had the second or third delivery?

A. No.

Q. What is the marriageable age in your community?

A. Generally speaking it is 16.

Q. So far as panchayats are concerned your own fear is that they will not work properly but supposing an obligation is laid down upon all the members of the public that as soon as such cases occur they will have to report just as it is done under section 44, Criminal Procedure Code, will you have any serious objection to this course?

A. I doubt whether this will be practical.

Q. We needn't bring all cases to Court except few cases. Would you like that system?

A. There must be a legal man at any rate who should be allowed to sift those cases and only bring proper cases.

Q. He would sift information and sanction prosecution in proper cases.

A. Do you mean a Stationary Judge sitting at Head-quarters? If so, I do not think he will be able to decide cases unless he goes to the villages.

Q. He may hold some sort of a preliminary enquiry and sanction the prosecution.

A. I am unable to give an opinion one way or the other on this point.

Q. As regards the difficulty you talk about amongst the Devadasis, may I take it that Devadasis take to their profession at less than 16?

A. Generally they take to their profession whenever they conveniently can, that is about 15 or 16.

Q. Supposing you are out to stamp out this evil, would you agree that the Age of Consent in extra-marital cases should be 16?

A. Yes; but at the same time I think you should make some provision for the Devadasis.

Q. They can marry.

A. I doubt it.



*Mr. Mudaliar:* What is your difficulty in raising the age beyond 14 in extra-marital cases?

*A.* Because it is the custom amongst the Devadasis to take to their profession as soon as possible, and if you fix the age at more than 14 they would not be able to begin their profession before the prescribed age and cannot therefore earn their livelihood.

*Q.* Can they not postpone it by one or two years.

*A.* What would they do in the interval?

*Q.* How do they keep on when the age limit is 14?

*A.* They are brought up in a family and they have got their elders who carry on the trade and keep the girls as members of the family. There is also the danger of the girls taking to blackmailing.

*Q.* There is that danger. But why do you say that the girl cannot be punished under the present law for abetment?

*A.* They will say that consent has not been given.

*Q.* Then the man who has intercourse with the girl will be punished. The man takes the risk just as he does when the age is below 14.

*A.* But whether he should be given some protection should be considered.

*Q.* But do you think that the girl could decoy him? Between 14 and 16 the girl would be young and the man would be older. Would he not be able to look after himself?

*A.* With this class of people you can expect anything?

*Q.* Supposing the age is fixed at 18, if the man approaches her he does so at his own risk.

*A.* If you raise the age from 14 to 18 the probability is that a girl of 16 may look like a girl of 18.

*Q.* Even if the difficulties you suggest do exist, do you not think that it is only in a very small section?

*A.* Yes; but what I suggest is that you should not legislate on this point on the assumption that they do not exist.

*Q.* Even taking that into consideration, do you not think that the age should be beyond 14? Do you not realise that the law is not intended to protect the girl of the prostitute class, but the well-behaved girl who is coerced against her consent?

*A.* At 14 I think a girl would be able to take care of herself.

*Q.* Do you think that she is able to understand the moral consequences?

*A.* That is what I believe.

*Q.* Having fixed the Age of Consent in extra-marital cases at 14 naturally you cannot fix the Age of Consent in marital cases at more than 14. But if medical opinion says that this is harmful and this is one of the potent causes of infantile mortality, would you then fix the Age of Consent in marital cases at 16?

*A.* I would do so if it is proved that infant mortality has been so very appalling as to threaten the very existence of the society.

*Q.* You say that Devadasis apply for permission. What do they apply permission for?

*A.* They simply give an application in pure language saying that they are going to begin their life of prostitution, so that no constable or other persons might harass them. They simply send it for information.

*Q.* In Madras only certain class of people amongst the prostitutes are called Devadasis. Evidently you apply the term to the whole class.

*A.* Yes.

*Q.* Do you think that non-Brahmins here are trying to adopt the Brahmin example of pre-puberty marriage? Do you think it is growing?

*A.* No, not now, except in a very few castes.

Q. What led to the arresting of this tendency?

A. The present awakening and the spread of education amongst them.

**Written Statement, dated the 14th August 1928, of Mr. J. S. KADRI,  
B.A., I.E.S., Educational Inspector, S.D., Belgaum.**

1. There is some dissatisfaction among the advanced and educated classes with the present law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code.

2. The steady progress of education and social reform throughout the country and the present general awakening among the masses who were inert and unresponsive to refined ideas and progressive influences in the past, combined with the altered economic conditions of life, have been instrumental in creating an atmosphere justifying an advance on the present law.

3. Crimes of seduction or rape in this part of the country do occur but are not frequent. The amendment of the law made in 1925 has to a large extent succeeded in reducing cases of rape outside the marital state and improper seduction of girls for immoral purposes.

4. The amendment has been indirectly effective in stimulating public opinion in that direction. Over and above this, however, the widespread propaganda going on in connection with child and maternity welfare activities, and the force of inevitable circumstances and conditions (social, moral, political and economic) have created a new outlook of life and helped to raise the age of marriage as well as of consummation to 14 and above.

Educational facilities are rapidly multiplying and boys and girls of all classes are now found anxious to continue at school longer than before. Social conditions have undergone and are still undergoing a radical change and the standard of education has now become a general standard, nay an essential condition, for the consideration and settlement of marriage proposals.

5. The usual age of puberty ranges between 12 and 14 in this part of the country. It differs in different communities, castes and classes according to their habits and ways of life and living.

7. Yes. Among the Hindus for whom there is a religious injunction that consummation should take place 16 days after the attainment of puberty. The Mohammedans generally contract marriage always after the attainment of puberty and in a large number of cases at an advanced age.

8. There is no such ceremony among the Mohammedans. Among the Hindus this ceremony is performed after the marriage, when the girl attains puberty.

9. The answer to the first part of the question is in the negative.

In my opinion, a break of 2 years is desirable and of one year essential to justify consummation after the attainment of puberty, in order to preserve the health of the girl and to ensure the birth of a healthy child.

The age of consummation should be above 15 for girls.

10. At the age of 15.

12. Yes.

13. Yes. The public opinion is now-a-days becoming general, though it is growing very emphatic and forceful among the advanced and educated classes.

14. The educated women are strongly opposed to early consummation of marriage for their children but the illiterate women adhering rather rigidly to old, traditional customs and usages favour the same.

15. I think no serious difficulties are experienced.

16. Yes.

17. I think differentiation is desirable. The present punishments for both kinds of offences are adequate.

20. I don't think so. Fixing the minimum age of marriage would be far better and more effective.

21. Strengthening the penal law will not be so effective in attaining the object in view as social reform through education and social propaganda.

### Oral Evidence of Mr. J. S. KADRI, B.A., I.E.S., Educational Inspector, S.D., Camp Belgaum, Dharwar.

(Poona, 5th November 1928.)

*Chairman:* Are you the Educational Inspector of the Southern Division and are your Headquarters at Dharwar?

A. Yes.

Q. How long have you been the Inspector of Schools?

A. I have been the Inspector of Schools for the last eight years.

Q. Before that I believe you have been in the Education Department. As such, will you let us know which of the Districts you moved in and have knowledge of these questions?

A. I have served the Bombay Division, Northern and Southern Divisions and also at Aden. I know about all the Divisions except the Central Division.

Q. Are you a Sunni gentleman?

A. Yes.

Q. In your answer to question 4, you have preferred three reasons, viz., (1) Widespread propaganda in connection with child and maternity welfare activities; (2) Force of inevitable circumstances and conditions and (3) A new outlook of life because of social, moral, political and economic conditions. Would you care to tell us anything about this propaganda in connection with child and maternity welfare activities?

A. Organizations of Baby Weeks and maternity and infant welfare centres are organized in different places, on a large scale in southern and northern divisions which have very softening effects on the ideas of the people about the proper age for marriage and the weaknesses of women and the necessity for educating girls. A large amount of attention is being paid to this kind of movement.

Q. What are the social conditions that you are referring to?

A. The social conditions are as regards the ideas about the position and prospects of girls; and in my division particularly the Karwari Brahmins are very much advanced in views about these things and they wanted a high school for their girls; and we have got several women graduates from amongst these Brahmins. These Brahmins are all good Saraswats. As regards the Mohammedans though they are backward they are also trying to give education to the Mohammedan girls.

Q. What is the age of these Mohammedan girls who attend schools?

A. About 14 and 15.

Q. Do you know of any discussions amongst the ladies or conferences held in your part of the country in connection with these present instances?

A. There was no conference particularly in connection with these, but we are having conferences and even we had a Mohammedan Ladies' Conference at Dharwar in May last when we held the Educational Conference. In general we had a special ladies' conference held and it

was well attended to by about 100 pupils in which several educated ladies took part. Of course this was purely educational but also social.

*Q.* Was there any discussion on these questions?

*A.* Yes. There was discussion about the customs and usages which are detrimental to social conditions, for example purdah, but not pointedly to these questions; but at least this point was emphasized by ladies that girls must be given proper education and should not be married so early as to deprive them of further education.

*Q.* What are the moral conditions which you are referring to?

*A.* People are now realising the advantage of education and the disadvantages of early marriages.

*Q.* What are the economic conditions?

*A.* People cannot afford to marry their daughters early because the boys cannot afford to maintain a family. The parents of the boys themselves are disinclined to go in for marriages for their sons at an early age unless they begin to earn something.

*Q.* Do you think that there is a very large tendency now-a-days to this effect?

*A.* Particularly amongst the educated classes some of them make it a condition that the boy must earn before they marry him.

*Q.* You have concluded in your answer to question 4 by saying that educational facilities are rapidly multiplying and boys and girls of all classes are now found anxious to continue at schools longer than before. Will you be able to tell me roughly what is the number of unmarried boys studying in the colleges?

*A.* I find more than 50 per cent are unmarried boys in the Training Colleges and there is also an equally large number of unmarried boys in the Arts Colleges because married life interferes with the studies of students.

*Q.* Supposing the age of marriage is deferred, will not the parents or guardians of the girls grudge to keep them in their houses and maintain them so long as 15 or 16, on account of their economic difficulties?

*A.* No. The parents won't grudge. The enlightened opinion of the day is that the parents are very anxious that the girls shouldn't leave their homes before they are properly educated and are fit to take part in life.

*Q.* You have in your answer to question 20 said that fixing the minimum age of marriage would be far better and more effective. May I take it that it will be more effective than the Age of Consent Law?

*A.* No. I don't think that. Raising of the Age of Consent is quite necessary; also the fixing of the minimum age for marriage. That is my opinion.

*Q.* What would you put for raising the Age of Consent and what would you put for the age of marriage?

*A.* I would put over 15 as the minimum for the Age of Consent and I won't mind even 16. As for the marriage, since there are several conditions which guide marriages, I would put at 14, and for boys I would put at 17 or 18.

*Q.* I suppose 14 according to you is probably the age when girls reach puberty. When you say the Age of Consent should be at 16 and marriage at 14 there will be a gap of two years. Will not the girls run any risk in these two years?

*A.* Of course the parents will be responsible for safeguarding the girls.

*Q.* Have you any reason to believe that in that part of the country where you are residing there is a breach of the law of the Age of Consent which now stands at 13?

*A.* I think there is a breach of the law amongst the lower classes.

Q. What do you mean by "lower classes"?

A. I mean by "lower classes" the uneducated classes.

Q. Do you think that there is a large number of offences in these classes?

A. I don't think so, but there is a fairly good number.

Q. Is the law known to them?

A. As a matter of fact it is not well known amongst the masses. If the masses are acquainted with the law, they will be more careful in obeying it.

Q. When you suggest that the age should be raised not to 13 or 14 which is the usual age for puberty of girls but to 16, do you think that by a wider publicity, the law is more likely to be obeyed even by raising the age?

A. I think so by educational propaganda.

Q. Don't you think that in such case there will be any dissatisfaction?

A. When people come to know about the advantages accruing, I think they will welcome it.

Q. What age would you put at for outside marriage?

A. 18. I fix 18 because a girl will then be capable of using her discretion.

Q. What is the usual age amongst Mohammedans when they get their girls married?

A. We do not marry our girls below 15 generally except under special circumstances when parents are very old. Most of the girls are married after puberty.

Q. If a father performs the marriage of his daughter before she attains puberty, is it open to repudiation amongst the Mohammedans?

A. No. According to our ideas and traditions of our Prophet, if a father or a grandfather performs it, then it is not open to repudiation; but if any relative or other guardian directly connected with the girl performs it, I think it is objected to. So far as the Muslim opinion goes I don't think it will be repudiated. According to Hanafi ideas whom we consider as our leader, he has put 17 for girls and 18 for boys as the age of puberty; while others have put down at 15.

Q. But in practice at any rate you don't find any such marriages being repudiated.

A. I have not heard of any so far.

Mrs. Beadon: In your answer to question 12 you say that early consummation and early maternity are responsible for high maternal and infantile mortality or for any other results affecting the intellectual or physical progress of the people. Would you mind telling us what makes you think that?

A. There is a very high mortality amongst the Mohammedan families and that I contribute mostly either to early maternity or early consummation.

Q. At what age do you find this high mortality?

A. If you can consider the vital statistics, you will find that the percentage of deaths amongst the Mohammedan women and children is much higher than those of any other communities.

Q. We are told that there is a great deal of sickness amongst the Mohammedan women and it is largely due to tuberculosis. Is that so?

A. That is due to purdah system also.

Q. Then why do you say that the high mortality is specially due to early maternity?

A. I say so because our social conditions are very peculiar. The physique of our women is not strong and stout enough to bear the consequences of child-birth and I think that it is mostly due to early consummation.

Q. Can you tell us any case in your own knowledge where there was early child-birth and the mother died or the infant died within two or three months?

A. I know of several cases in which our girls have died soon after the child-birth.

Q. Within how many months the mother died?

A. I know of cases in which the mother died on the very first day.

Q. What was the age of the mother?

A. 15 or 16.

Q. When did this happen?

A. This happened within the last 3 or 4 years.

Q. Do you know of any cases that occurred recently?

A. Yes.

Q. Would you say half a dozen cases?

A. More than that.

Q. I am told that the Mohammedans marry later and as such there is less danger for the girls during the child-birth.

A. Amongst the higher classes where purdah is strictly observed, the health and physique is not satisfactory and that is the reason why this infantile mortality and maternal mortality is rather high.

Q. Now in those cases what about the infants? Do they survive?

A. Generally when mothers die every effort is made to keep the child but it is very difficult for the child to survive; and many children die after the death of their mothers.

Q. Would you be in favour of registration of marriages?

A. Yes. We have registration of marriages compulsory according to Mohammedan law.

Q. By whom are these registers kept?

A. They are kept by the Kazis.

Q. Are they satisfactorily kept?

A. Yes.

Q. If you refer to them later on, can you get the correct particulars?

A. Yes.

Mrs. Nehru: You have said in your statement that you personally favour marriage legislation to the Age of Consent. Is that the view of the people in general?

A. I may say that it is the view on behalf of the educated Muslims.

Q. Do they prefer marriage legislation to the Age of Consent?

A. I may say that it is my personal opinion because majority of Mohammedans are not in favour of legislation but I am in favour of marriage legislation.

Q. Which of the two generally all the Mohammedans prefer?

A. The Mohammedans would prefer Age of Consent.

Q. But you personally prefer marriage legislation.

A. Yes.

Q. You consider that it is possible for the parents to keep the girl apart from the husband up to the prescribed age. Do you propose to make them responsible for any risk up to that age?

A. The best course which I can suggest is to give them facilities for education, so that they might keep up their education up to that age and then they might undertake their domestic life. That is my opinion.

Q. Supposing the husband insists on having the girl before that age, how do you propose to get out of that difficulty?

A. Then it will be a difficult position. If the husband insists on having his wife, the parents won't have the ability or the moral courage to keep back the girl.

Q. Under this law, would you suggest the taking of bonds from the parents or the husband to keep the girl and the husband separate till she reaches the prescribed age?

A. I think it will be a great hardship because there may be so many social circumstances in particular cases which might require the husband to have the benefit of his wife for domestic and social purposes, *e.g.*, if he has no parents or other elderly woman in the family to look after.

Q. But don't you think the moment the wife comes she runs the risk?

A. Yes. No doubt. But as I said before, we have to improve the ideas of the people and create a sort of responsibility in them.

Q. Is there an intervening period between the consummation of marriage and ceremony of marriage in your part of the country?

A. When the girls are young, then there is.

Q. Is there any ceremony performed amongst the Mohammedans at the time of the consummation of marriage?

A. Not amongst the Mohammedans.

Q. Is there any feast at that time or anything of that sort?

A. Yes; there is. It is a social function which is celebrated as a formality and not as a necessity.

Q. Is this ceremony getting out of use now or is it celebrated in the same way as before?

A. Much importance is not attached to it. It is almost a formality and not quite a necessity. It may be dispensed with.

Q. What is the state of women's education in your community?

A. It is very backward at present but now they are gradually advancing in education though rather slowly.

Q. What percentage of women do you think are literate?

A. About 2.5 per cent. are literate.

Q. Do your girls take advantage of the municipal schools in the different places?

A. Yes.

Q. Up to what age do they go to schools?

A. 11 to 12.

Q. Are there free schools in your part of the country?

A. All schools are free for girls. As a matter of fact all primary schools for girls are free. In middle schools we give them the benefit of exemption from fee in case of poverty.

Q. Do Mohammedans generally think that fixing the age for marriage or fixing the Age of Consent is against any injunction of their religion?

A. We have got a clear injunction as regards our marriages from our Fakirs or Mohammedan lawyers and the Mohammedans think that Government have no business to outdo their own usages and legal decrees.

Q. Do they not base it on religion?

A. No. Not necessarily.

Q. Would you like to make the marital offence cognizable?

A. Under the proposed advanced state it may be kept non-cognizable after 12 and before 12 as it is at present. Under 12, my personal opinion is that the punishment should be made deterrent so that the people might be afraid to commit offences.

Q. What punishment would you have when you raise the age to 15 or 16?

A. I think fine for the first offence and then imprisonment.

Q. Would you put a limit to the fine?

A. I think discretion may be left to magistrate, I won't put any limit to the fine.

Q. To whom would you give the right of complaint?

A. I would give the right of complaint direct to the relations or persons interested in the children according to kinship.

Q. Would you like to give the right of complaint to social reform organizations?

A. Not under the present circumstances.

Q. Why are you afraid of the present circumstances?

A. The guardians and the near relatives would be the best men because they have a direct interest in the welfare of the parties concerned.

Chairman: Are you not aware of the fact that it is these relatives who are most interested in not bringing the complaints?

A. That is also true.

Mrs. Nehru: Supposing committees are formed of disinterested persons to bring such cases to light, would that be advisable?

A. I think that would be advisable, i.e., formation of such committees in whom people might have confidence.

Q. By whom would you like the committee to be appointed?

A. If they are elected, so much the better.

Q. But who will elect them?

A. Government might nominate people at the recommendation of the people.

Mr. Mitra: Will not the orthodox Mussalmans equally object to consent law as against the marriage law?

A. I think as I said before, they would prefer consent law.

Q. Why should they object to a marriage law and may I know what is the reason for that?

A. They consider marriage to be a sacred matter and they don't like any interference.

Q. Is it not a fact that there is nothing in the Mohammedan scriptures about fixing the age for marriage?

A. We have got general instructions in our Kuran and on that we have got fatwas or legal decrees.

Q. Do you challenge this statement that there is nothing in the Kuran about fixing the age for marriage?

A. The exact age is not defined but there are general instructions.

Q. So if we fix the age by law, would not the Mohammedans resent it?

A. Under the present mentality of our Mohammedans they would resent it.

Q. You say that Mohammedans object to marriage law on certain grounds. Are not the same grounds applicable to consent law as well?

A. They are applicable to the consent law too but they would prefer this to the marriage law.

Q. Then do you say that it is their preference and not their religious notion?

A. But it is based on religious sentiments.

Q. What do you consider to be the orthodox view for opposing the marriage law? You may take it from me that there is nothing in the Mohammedan law fixing the age for marriage?

A. Yes. There is nothing so far.



Q. Then why do they resent?

A. The Mohammedans are not sufficiently advanced in the logic about this law as I may put it.

Q. Anyway you think there will be no great objection to consent law?

A. Yes.

Q. In the case of a marriage law what shape this resentment of the orthodox people will take?

A. The orthodox Mohammedan people have already protested I think in some quarters and they might object to the law being applied to Mohammedans.

Q. But you are not afraid that there will be riots or other things on these matters.

A. If public opinion is properly cultivated, I don't think the matter will reach to such an extent.

Q. But public opinion is generally led by men of advanced views. You yourself admitted that there is a lot of infant mortality and that the whole thing is due to early maternity and early consummation and you also said that there are very little chances to make the consent law effective unless we raise the age of marriage. So is it not desirable to have a marriage law for the best interests of the country?

A. Of course it is desirable to have a marriage law but the present time is not quite ripe for our Mohammedans to have such a sweeping change.

Q. Do you think that if the age fixed for marriage is lowered, there will be less objection from the orthodox Mohammedans?

A. I think the orthodox section will continue to advance the same objections.

Q. You were telling of police harassment and that people are very much afraid. You know that even now when the age of the girl is below 12, police can take cognizance. Do you think that there has been much harassment by police up till now to your knowledge?

A. I think in some very rare cases there was much police harassment.

Q. Is it not more or less an apprehension?

A. I haven't got sufficient data to prove this.

Q. Do you suggest that these cases should be tried *in camera*?

A. I am very strongly of the opinion that these cases should not only be tried *in camera*, but they should also be compounded too.

Q. According to you, should fine only be the first punishment?

A. Yes.

Q. Do you think it is applicable in all cases or in cases of girls below 12?

A. For girls below 12 the present law as regards punishment should stand. As for the higher ages fine alone should be inflicted for the first offence.

Q. Do you want any kind of court to be constituted for the trial of these cases?

A. If there are any special courts—not criminal courts—that would be better.

Q. There is a suggestion that matrimonial courts may be constituted and presided over by a judge with the help of two assessors. Would you like this suggestion?

A. This would be very much appreciated by the public.

Q. Do you think that if these suggestions are accepted, then there will be greater chances of cases coming to court?

A. Yes. There will be less chance for concealing or suppressing these cases.

Mr. Bhargava: About the registration of marriages you were pleased to say that according to Mohammedan law the registration of marriages is compulsory. I want to know the meaning of "compulsory".

A. In all towns and cities we have got our Kazis and they maintain a regular register of marriages.

Q. What about the rural areas?

A. They have to send for Kazis from neighbouring places if they have none.

Q. Supposing no Kazi is available and marriages are permitted, may I take it that so far as the rural areas are concerned, there is no registration of marriages even now?

A. But amongst the Mahomedans they do generally get the marriages registered.

Q. In what way do they get the marriages registered?

A. They send for the Kazi who keeps the register and get the marriages registered.

Q. You say you have got experience of the Bombay Presidency. Have you seen that the Kazi's register is kept correct?

A. I have seen the Kazi's registers which are printed books and there the names of the parties and other particulars are entered.

Q. Are the signatures of the guardians and the witnesses also taken?

A. Yes. All have to sign.

Q. Do you think that these registers are generally produced in Courts?

A. Yes.

Q. Supposing there have been complaints that the Kazis have removed certain pages from the register on account of some underhand motives, how will you prove the marriages?

A. Oral evidence can be tendered to prove the marriages.

Q. Why are you in favour of registration of marriages?

A. To establish the marriage, I think the registration of marriages is a necessity. This register will be useful even if there is a divorce case after 20 years.

Q. Am I to understand that even if there is no marriage law or consent law, even then this registration of marriages will be very useful.

A. Yes.

Q. You have spoken about the literate amongst the men in towns. May I know what is the percentage of literacy in the rural areas?

A. Our percentage of literacy for males is about 8 per cent. (both in towns and villages) and for females it is very low nearly 4 per cent. in general.

Q. You are of opinion that the right of complaint should be confined to only very near relations and guardians and that you are also of opinion that some committees may be appointed to look after these cases and that the Government might nominate people to form this committee on the recommendation of the people. Is it something like the village panchayat?

A. Yes. Exactly it is like the village panchayat.

Q. Those people may be given the power of reporting cases. Is that your idea?

A. Yes.

Q. Do you think that marriage registration may also be done by them?

A. No. I don't think they will be able to do this work.

Q. You know the present practice in Bombay Presidency seems to be that the village patel keeps the birth register and the Revenue Officer comes and checks the register. Why not the village patel be entrusted with this work also?

A. Instead of the village patel doing this work the committee may be entrusted with this work because the village patel is not free from local politics.

Q. On whom should the duty of reporting marriages rest?

A. In towns and municipal areas the duty of reporting marriages should rest on the parents. In rural areas it should be made compulsory to report. The duty should be upon the parties concerned just as it is in the case of registration of births.

Q. Do you require that in case the duty is not performed a small fine may be imposed?

A. Yes.

Q. You are of opinion that the trials of intra-marital cases should be in camera. Would you like the same to be adopted for the extra-marital cases?

A. Not necessarily.

Q. May I know the reason why?

A. In a marital case you have got the sanction of the religion whereas in regard to a stranger it is a very great scandal. The trials in extra-marital cases should be published so that they might serve as a deterrent. The fact of notoriety may have a deterrent influence on these people.

Q. Do you not think that this notoriety will be a very great check in intra-marital cases also if the trials are published?

A. It will serve as an indirect check on marital cases also.

Q. I think you are of opinion that so far as the girl's statement is concerned, the same can be made in camera and the public may be excluded. Is that your idea of camera trials?

A. Yes. The girl will be more at home if we take her statement in camera.

Q. You have been pleased to say that the courts should be more of a social nature than of a criminal nature. What do you mean by social courts?

A. I mean by social courts that there will be only fine and many cases might be compounded and it will not give notoriety.

Q. Am I to understand that you are for arming the court with power to give the deterrent punishment?

A. I won't mind that.

Q. You seem to be afraid of police interference and you thought also that if power was given to the members of the public in general, then there is a likelihood of misusing this power. May I suggest to you that when a case is brought, there will be a preliminary enquiry to start with. How do you like this idea?

A. I would desire a preliminary enquiry in all cases.

Q. Or would you like to have a sanction previous to enquiry to be given by some officer like the Director or Prosecutions certifying that it is a fit case to be proceeded with? Would you prefer the latter or the former?

A. I would prefer the former, viz., a preliminary enquiry. If in a preliminary enquiry it is proved that there is sufficient cause, then the case may be proceeded with.

Q. Then you see—as the chairman has been pleased to point out—that if you restrict this right there will be no cases coming to court. Practically it will be a dead letter.

A. People have apprehension that the power might be abused in future if the right of complaint is vested in all. Let the right of complaint remain as it is and we shall try for the first five years and then change the law.

Mr. Kadri: You have come into intimate touch with the Bombay Mahomedan population throughout the presidency with the exception of central division. May I know which are the communities or classes amongst whom early marriages and early consummation take place? We have been told that the Dawoodi Borahs, the Sunni Borahs of Broach and the Ghanchees of Godhra are the worst defaulters in this respect. Can you name any other community or class where early marriage and consummation take place?

A. I think there are minorities also, e.g., pinjaras and butchers. In Southern Division we have got some bad customs and early marriages prevail amongst those people.

Q. What about the Kokni Mahomedans?

A. They were originally Arabs and intermixed with other Mahomedans similarly we have got Nawairs in Canara District. They are also Koknis; they were originally Arab Mahomedans who are domiciled here. They are mercantile people, and follow the same customs as the Kokni Mahomedans.

Q. What are their customs regarding the marriage of their girls?

A. They don't marry their girls at an age earlier than the puberty age which they attain at about 13 or 14 and the girls can be mothers before they complete 14 or 15.

Q. What is the population of Kokni Mahomedans in the Colaba and Ratnagiri Districts?

A. We have got a large number in Colaba District and also in Bombay District. In the Ratnagiri District we have got a fairly large number of Koknis.

Q. You have studied the scriptures and Hadis. Now, may I know why this agitation amongst the Mahomedans against the marriage legislation is spreading? Is there any religious sanction behind this agitation?

A. There is no religious sanction but they consider that fixing an age would be an interference with religion.

Q. There is no injunction in the Kuran or in the Hadis recommending consummation immediately after puberty or soon after puberty. Is it not?

A. In the Kuran there is nothing. It is all general.

Q. You were saying about the Kazi. I take it that it is not the Kazi alone who can celebrate a marriage.

A. Any man can celebrate a marriage.

Q. In view of this law would you advocate registration of marriages for Mahomedans at all places?

A. Yes.

Q. Now we are told that the registration of births in rural areas is not properly done and it is suggested that the educational authorities might be invited to make a rule requiring every guardian to produce an extract from the birth register before admitting his ward—boy or girl. Do you favour this suggestion?

A. Yes. Even now we do require extracts from birth register, but wherever extracts are not forthcoming we take the statement of the guardian.

Q. You were for some time in Aden and the Somaliland Protectorate. What are the class of Mahomedans living there?

A. Somalis, Arabs and some Egyptians and Missionaries. They are all British Subjects.

Q. What are the ages of consummation amongst those people?

A. The Indian Mahomedans follow Indian customs. They marry at the age of 14 or 15 but consummation takes place only after puberty. As regards the Arabs they marry their girls at the age of 16 and 17 and consummation takes place soon after marriage. As regards the Somalis they are a kind of peculiar people. They are not very well educated and they are much under missionary influence because it is only amongst these Somalis that the Christian missionaries have been able to make some converts. As a rule the Somalis are very poor people and their children are taken to orphanages and are converted. Amongst the Somalis the girls reach their age of puberty rather very early. They come from a very hot country. The girls do become ripe at 12 or 13 and I have seen girls giving birth to children at the age of 13 and 14. Their stamina is very strong. They have not got any purdah and they are working people. The children born of these young mothers are very healthy. They know diving also.

**Written Statement, dated the 6th August 1928, of Mr. G. G. HAYAL-DAR, District Court Pleader and President of Bar Association, Bijapur.**

1. There is no dissatisfaction with the state of law as to the Age of Consent contained in sections 375, 376, Indian Penal Code.

2. Considering the advanced state of the society and the education of the people and their changed habits in all the society, I think,—

(i) the law of the Age of Consent should be retained as it is now;

(ii) there is no necessity of making an advance in the present law.

3. (a) Not frequent.

(b) No.

(c) No. The measure proposed should be that the investigation of such offences should be entrusted to the higher police officers than the Sub-Inspector of Police.

4. (a) The Amendment Act XIX of 1925 has not the effect of consummation of marriage in its postponement.

(b) Nor it has stimulated public opinion.

(c) Nor the marriages are put off beyond 13 years. The only effective step would be to give the investigation of such offences to the higher police officers such as District Superintendent of Police or Deputy Superintendent of Police and not to the Sub-Inspector of Police and encouragement should also be given to the complainant who makes complaints of such offences.

5. The girls generally attain puberty between 13 and 14 in my part of the country. It does not differ in different castes, communities and classes of society.

6. (a) No.

(b) Yes.

(c) Very seldom. Very few people come to Courts to complain of such offences.

7. There is no religious injunction at all for the early consummation of marriage before puberty. But there is religious injunction for the consummation of marriage after puberty. (Vide मनुस्मृतौ Chap. III, verse 45, beginning with ऋतुकालाभिगामी रतिकाम्यया

Parashar also says: ऋतुस्नानान्तुके कार्यं सन्निधौ नौऽप्य गच्छति धारायां प्रण हत्यायां पतने नात्र संशयः ॥

These authorities will convince that if a husband will not cohabit with his wife who has attained puberty will have to fall in a terrible hell for the sin of killing a child.

8. (i) Yes.

(ii) It coincides with the consummation of marriage but is not anterior to it at all.

(iii) It is generally performed after the attainment of puberty.

9. (a) It can in some cases be considered to be sufficient indication that the attainment of puberty justifies the consummation of marriage.

(b) 13 or 14 years or one or two years after the attainment of majority, will be the proper age at which the girls' physical development should be considered enough to justify the consummation of marriage without injury to her own health or that of her progeny.

10. At the age of 13 or 14.

11. (a) I have come across some cases in which cohabitation before puberty has resulted in injury to girl's health and body and her progeny. But not so after the attainment of puberty.

(b) At the age of 11 years cohabitation generally injures her health, and she becomes incapable of bearing.

12. Yes.

13. No. The development seems to be confined with the educated classes only with regard to the Act XIX of 1925.

14. No.

15. (a) Yes.

(b) The age certificate should be asked to be produced in the case.

16. No.

17. Yes.

(a) Marital offences should be punished only with simple imprisonment and it should not be more than 2 years.

(b) Extra-marital offences should be punished with rigorous imprisonment of 7 years or upwards.

18. There should be difference in the procedure of trials between the two classes of cases.

(a) The trial of offences within the marital state should be made by the District Magistrates only.

(b) The extra-marital offences should be tried by any competent magistrate as it is done now.

19. No.

20. I think penal legislation will not be more effective than fixing the minimum age of marriage. The fixing of the minimum age of the marriage would be in consonance with the public opinion in my part of the country.

21. I do not rely on the strengthening of the penal law to secure the object in view. I rely on the progress of social reform by means of education and social propaganda.

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### Oral Evidence of Mr. G. G. HAYALDAR, District Court Pleader and President, Bar Association, Bijapur.

(Poona, 5th November 1928.)

*Chairman:* Are you District Court Pleader and President of the Bar Association at Bijapur?

A. Yes.

Q. Are you connected with any social reform movement?

A. There are no social reform movements at Bijapur.

Q. How long have you been at the bar?

A. For the last 26 years.

Q. Do you belong to the Madhwa community?

A. Madhwa Vaishnav community.

Q. What exactly do you mean by answer to question No. 2: "Considering the advanced stage of society and education of the people and their changed habits in all societies I think only the law of the Age of Consent should be retained as it is now and secondly there is no necessity of making an advance on the present law"?

A. People have advanced their notions of marriage already.

Q. What do you think is the population of Bijapur District?

A. About 2 lacks.

Q. I suppose you know the mofussil and village life?

A. Yes.

Q. What are the chief castes in the villages?

A. Lingayats, Marathis, Jains and Kolis.

Q. What do you think is the percentage of the Brahman population in the whole of Bijapur District?

A. About one-tenth of the entire population.

Q. Now this advanced class that you are referring, what percentage is it of the entire Brahman class?

A. About 6 or 7 per cent. of the Brahman population.

Q. That is to say, there is still 92 per cent. of Brahamans who do marry their girls early?

A. They have also come up to the age of 12 but among the 7 per cent. marriage is performed at more than 14.

Q. When does the consummation of marriage generally take place? Does it take place generally after puberty?

A. Yes.

Q. Soon after the puberty?

A. Some time is allowed to elapse after puberty before consummation takes place.

Q. Have you said that the age of puberty is 13—14?

A. 14.

Q. Among the 92 per cent. of Brahamans among whom marriages take place at 12, have you any reason to believe that consummation of marriage takes place before a girl is 13 years complete?

A. It may be in a few cases but I do not know.

Q. When does marriage take place among the other classes except the Brahamans?

A. The other classes and the 92 per cent. of Brahamans have the same custom of marriage at 12.

Q. Is it possible that in other classes a girl may become a mother at 13, 14 or 15? Do you know any girl who may be mother at 13 or 14?

A. In other classes the custom is that they do not send their girls to the husband's house until they have attained puberty.

Q. Do you know if girls become mothers before they complete 14 or before they complete the age of 16?

A. Yes, there are cases.

Q. Do you consider that one or two years after puberty must elapse before a girl is developed enough to become a mother?

A. Yes, it is good.

Q. You say girls attain puberty at 14. So according to you at 16 a girl is fit enough to become a mother, is it so?

A. Yes.

Q. If possible a girl should not be a mother before 16?

A. Yes.

Q. Do you consider it unsafe for a girl to become a mother before that age?

A. Yes.

Q. You have suggested in answer to question No. 10 that the age may be 13—14?

A. No, it ought to be 16.

Q. Your opinion is that you would rather have a law fixing the minimum age of marriage?

A. Yes.

Q. As between the law of the Age of Consent and the law penalising marriages before a certain age, would you prefer the marriage law?

A. Yes.

Q. You think that would be in consonance with public opinion in your part of the country?

A. Yes.

Q. When you say in answer to question No. 2 that you would not have an advance on the present law, what does it mean exactly?

A. I do not favour an advance on the consent law.

Q. What is the age that you suggest for the marriage of girls?

A. 12.

Q. But you do not want the Age of Consent?

A. No.

Q. And you say girls attain puberty at 14 and consummation should take place 2 years after that and at the same time you want the age of marriage at 12? How is that?

A. That would be going up step by step. I think 12 is now the accepted age. It is for the sake of those castes who do now marry at 12.

Q. What should be the age of boys?

A. There should be a difference of 5 to 10 years in the ages of boys from girls.

Q. Do you think the law of Age of Consent has been effective in your part of the country?

A. No, not a single case has come to court.

Q. But do you think cases do happen?

A. Very few.

Q. Do you think that this law is known among the people?

A. It may be known among the educated classes but the backward classes do not know it.

Q. What is your objection to the Age of Consent? Is it because it will be ineffective?

A. There will be objection from the religious point of view.

Q. The law of the Age of Consent is open to objection which you quote in answer to question No. 7?

A. Yes.

Q. Do you think it is mandatory or permissive?

A. It is mandatory.

Q. Do you know what is the *prayaschit* for this?

A. I do not know.

Q. If I tell you that *prayaschit* is 100 *pranayams*, would you consider that this a very great sin?

A. Whether it is a sin or not, it depends on the mentality of the people.

Q. You have said in answer to questions Nos. 11 and 12 that you have come across some cases in which cohabitation has resulted in injury to the girl and to her progeny but it is not so after the attainment of puberty? Do you really mean to say that you know of cases of pre-puberty cohabitation which have resulted in injury?

A. Yes, I know one or two cases.

Q. Do you know any cases in which girl-mothers before completing 15 or 16 have suffered in health?

A. Yes, I have come across such cases. They are weak. I have got statistics from the municipality. Out of 866 births in 1926-27 109 children died.



Q. You cannot say that these are deaths of children of young mothers. You will observe that the births that are registered are of mothers of all ages.

A. There are very few cases of late motherhood.

Q. You think that these births are of mothers of below 20?

A. Yes.

Q. Where are the births registered of mothers of over 20?

A. They are not given.

Q. Therefore they are children of all mothers. These are not the births of mothers who are necessarily below 16, is it not?

A. Yes.

Q. Can we really say how many children died who were born of mothers below 16?

A. No, we cannot say.

Q. But from personal knowledge have you not seen any girls becoming mothers below 16 and suffering?

A. They are not many in Bijapur.

Q. How many have you seen during the last 5 years?

A. They are nearly 5 per cent.

Q. Supposing medical opinion is to the effect that before 16 complete a girl is not fit to become a mother with safety to herself and to her children, would you still like that consummation of marriages should take place at about 14?

A. Personally I do not like it.

Q. It is only a sort of compromise with public opinion that you want to begin at 12?

A. Yes.

Q. Do you think there will be much dissatisfaction with a higher marriage law?

A. Yes, there will be dissatisfaction.

Q. Supposing we have no marriage law and we raise the Age of Consent to 14 or 15 or 16, as you might recommend, do you think there will be dissatisfaction?

A. No doubt there will be dissatisfaction.

Q. Will it be less than in the case of marriage law?

A. It will be the same.

Dr. Beadon: Would you like to have registration of marriages?

A. I am not against it.

Q. Do you think it will be feasible to have a license for marriage?

A. It is not feasible.

Q. Do you think it will be taken as a right thing to stop child marriage?

A. Yes.

Q. You say that you have come across cases in which injury has resulted. We have been told this is a national loss and some method may be devised to improve the health of India. Therefore if licenses for marriages were granted up to a certain age, don't you think it will be a helpful measure?

A. It will be a helpful measure but it will not be popular.

Q. Have you found in your experience that it is difficult to determine the age of girls in cases which come to court?

A. Age is determined by medical evidence.

Q. Have you seen that there has been any trouble with medical evidence?

A. No.

Q. Do you think that on the whole medical evidence is satisfactory?

A. Yes.

Q. Do you think the birth registration is satisfactory in your town?

A. So far as I know, it is satisfactory because generally information is given as soon as the birth takes place. The guardian or the father gives this information and there is a law that its breach will be punished.

Q. We have been told that in big cities like Bombay about 18 per cent. of the children are missed?

A. That is not the case here. As a result of the law people are afraid and give information.

Q. Do you think practically the whole of the people give information about birth?

A. There may be 5 or 10 per cent. missing.

Q. Can you make any suggestion so that those 5 or 10 per cent. may be brought in?

A. Efforts should be made by the municipality to collect information.

Q. You think if they are threatened with fine or imprisonment all people will come to report cases?

A. Yes, if one or two people are punished others will come forward.

*Mrs. Nehru:* Do marriages take place before 14?

A. Yes, they do.

Q. In what proportion marriages do take place before 12?

A. I cannot give the proportion but they are very few.

Q. When you propose that there should be marriage legislation up to the age of 12 and consider it an advance and at the same time you think there are hardly any marriages before that age, then in what direction is it an advance?

A. These cases will be checked.

Q. But they are very very few according to you?

A. Yes, but there will be dissatisfaction even with this law of 12.

Q. In your personal opinion should there be a higher age?

A. Yes. The lower age leads to the deterioration of the race and it is very injurious.

Q. Therefore your personal opinion is that the marriage age should be 16. Why do you think people are against it?

A. They are orthodox people and they wish there should be no law.

Q. Have they expressed this opinion so far?

A. There has been no opportunity.

Q. Sarda's Bill and Gour's Bill have been before the public for the last 3 years or more.

A. There has been no expressed agitation.

Q. Have you heard of any agitation or dissatisfaction on the other side?

A. People are ignorant of these laws.

Q. If people are ignorant and indifferent how do you take it that they will oppose it?

A. When there is a law they will know it and will agitate.

Q. This is a fear in your mind which may or may not materialise.

A. Yes.

Q. I draw your attention to numerous meetings held in the country asking for an advance on the marriage age?

A. In my District there was no meeting.

Q. Are there any newspapers issued from your District?

A. Yes, some vernacular papers are issued.

Q. Do they discuss these matters in those papers?

A. Yes.

Q. Do they think that there should be no law with regard to marriage, etc.?

A. No.

Q. Have any meetings of women taken place in your part?

A. No.

Q. In your district did ever a constituency meeting take place for electing delegates to the Women's Educational Conference?

A. No.

Q. Did you send any delegates to the Educational Conference?

A. No.

Q. Are there any girl schools in your District?

A. Yes, there are one or two. One is middle school and one is a primary vernacular school.

Q. If you are assured that in other parts of the country there will be no dissatisfaction with the raising of the Age of Consent and the fixing of the age of marriage, then would you support it?

A. Personally I would not oppose it but there may or may not be opposition.

Q. You say that the means of bringing these cases to light are to give the right of investigation to high police officers. By giving the right to high police officers how will these cases come to light? Supposing, the Deputy Superintendent of Police is invested with such powers, how will that work?

A. People have no confidence in the police officers below the rank of an Inspector. Those officers should try to bring these cases to court.

Q. But they cannot investigate unless somebody complains?

A. In towns if an Inspector hears that such and such a case has happened he will go to the house and make investigation.

Q. Then would you make it cognisable by high officers of police?

A. Yes, higher officers should investigate.

Q. It has been cognisable below 12 so far but cases have not come to light. What is the reason for that?

A. Because people are afraid of scandal.

Q. Do you mean to say they do not come to light because future prospects of the family are involved?

A. Yes.

Q. Have you any suggestion to make so that the boy may be punished and yet the family saved from ruin? Is it the high punishment which ruins the prospects of the future of the girl?

A. In cases in which a husband is involved it is disgraceful for the girl.

Q. If punishment is reduced, do you think that cause will be removed?

A. It will be removed a little.

Q. Will any other alteration in the law remove this cause?

A. No.

Q. In answer to question No. 4 you say that encouragement should also be given to the complainant who makes a complaint in such offences. What is the encouragement that you want to give to the complainant?

A. I mean a reward should be given to the informer.

Q. Don't you think if such rewards are given, a number of people will come forward and bring complaints for greed for reward?

A. But some cases will come to light if a reward is offered.

Q. Who are the people who are likely to come forward for the sake of rewards?

A. Some distant relatives of the girl.

Q. If such rewards are offered only those people who are not interested in the welfare of the girl and who are interested in taking rewards will come

forward and they will not be reliable. Don't you think therefore that this is not the best way of bringing cases to light?

A. Yes.

Q. Then you do not think this encouragement should be given?

A. No.

Mr. S. C. Mitra: May I take it that you are in touch with the orthodox opinion in the rural areas as well?

A. Yes.

Q. You think that orthodox people are opposed on principle to any legislation interfering with their social matters.

A. Not all, but some orthodox people are against it.

Q. And they rely on the Queen's Proclamation that Government should not interfere in these matters.

A. Yes.

Q. And there is a large body of people who think like that.

A. Yes.

Q. What are the religious injunctions for early consummation of marriage?

A. Manu and Parashar.

Q. Do you know of any religious injunction about marriage?

A. Formerly it was thought that marriage should take place when the girl is 8 years but now people are advancing.

Q. Do Shastras fix the age of marriage at 8, 9 or 10?

A. Formerly it was 8 but now by custom it is 12.

Q. So that if there is a Shastric injunction it is not really binding on the people?

A. The custom prevails over law.

Q. If it be the custom to fix marriage at 14, would that be accepted?

A. Yes.

Q. So it cannot be said that orthodox opinion is strictly following the Shastric injunction.

A. Personally I do not, but I cannot say about other orthodox people.

Q. What do you think the resentment of the orthodox people will be? Will there be Satyagrah?

A. There will be opposition.

Q. Will it end in meetings only?

A. Yes. In course of time people will yield to law and will take to it without much trouble.

Q. You do not apprehend there will be riots.

A. No.

Q. In para. 8 you say about difference in procedure in trials. Do you think that because there is deterrent punishment for breach of marital cases, so they do not come to light?

A. Yes.

Q. If there is simple imprisonment or fine only, will cases come to court?

A. Yes, more cases will come.

Q. Do you think cases should be compoundable?

A. Yes.

Q. And may such cases be tried in camera so that scandal may be avoided?

A. Yes.

Q. Do you recommend any special tribunal like a matrimonial court?

A. If it is possible I will recommend it.

Q. If these methods are adopted there are more chances of cases coming to court?

A. Yes.

Q. You talk of police harassment and so you suggest that higher police officers should investigate these cases. Do you really remember any case of harassment?

A. There are harassment cases but they do not come to light.

Q. You would like to give the right of complaint to the near relations of the girl otherwise you think other people will abuse the power.

A. Yes.

Q. What is the system of registration of births in rural areas?

A. Generally people give information to the police patel. According to revenue laws they are bound to report births.

Q. You have said that there is a fine for non-reporting. Is any fine imposed in rural areas?

A. No.

Q. Is that the reason why birth registers are not accurate?

A. Yes.

Q. If some fines were inflicted for its breach you think registers will be more accurate?

A. Yes.

Mr. Thakurdas Bhargava: Will there be great dissatisfaction among the people if they are required to report births and deaths?

A. There will be dissatisfaction but its effect will be very good.

Q. If there may be any dissatisfaction in the country for a measure and the resultant effect is very good, are you for such a law?

A. Yes.

Q. Will there be dissatisfaction among the people if the marriage age is raised?

A. They will not understand the law.

Q. The same thing would also apply to the orthodox people. As you are in favour of legislation for such people as marry their girls below 12, there may be some people who will say that girls should not be married below 14, is it not so?

A. Yes.

Q. People think there should be marriage legislation even if there is some dissatisfaction. Is it so?

A. Yes.

Q. How many pleaders there are in your town?

A. 84.

Q. Generally speaking you represent their opinion?

A. Yes.

Q. Will not such a large number of educated people be able to control public opinion even if such a law is passed?

A. Yes.

Q. You have been pleased to say that in your opinion these cases are not brought to light because the prospect of the husband being punished and the fact of the case being against a husband is regarded as a very bad state of things?

A. Yes.

Q. In cases relating to other offences whenever there is a prosecution against a husband there will be dissatisfaction to the husband and the chances of estrangement will be the same.

A. If only fine is inflicted it will be better.

Q. Supposing there is only fine, there will be a prospect of his being dragged to the court and there will be a trial, will that not be sufficient to estrange the feelings?

A. That will not be such estrangement as it will be if he is sent to jail.

Q. Don't you think if the punishment is fine only people would regard it as a commercial offence?

A. They will not consider it in that way.

Q. You said that you would restrict the right of complaint to parents and others interested in the girl. May I understand that you are in favour of reports being allowed to be made by every person?

A. Report may be made by any person but the complaint should be made only by a relative.

Q. You are in favour of giving the right of initiation of prosecution to the police?

A. Yes.

Q. The authority that you quoted in reply to question No. 7 denotes that it is not of a mandatory character?

A. It means that such and such thing should be done.

Q. Suppose it means "should be" even then it is recommendatory.

A. People look upon it as an injunction.

Q. The author of these Shlokas means to restrict going to one's wife to retain particular periods and explains what is the proper time for going to one's wife.

A. Yes.

Q. So far as Manu is concerned is there no punishment?

A. No.

Q. Is there any temporal sanction also?

A. Some havan is to be performed.

Q. Is this not voluntary?

A. Those who follow the religious injunction will have to perform this havan for *prayaschit*.

Q. Will not the *parayaschit* prescribed cost only 2 annas?

A. I cannot say.

Mr. Kanhaiya Lal: You say the injunction laid down by Manu requiring a man to approach his wife is mandatory. Supposing a wife refuses to allow the husband to approach her?

A. According to religion she cannot possibly refuse.

Q. Is there any such recommendation or injunction for the women?

A. No.

Q. If the wife refuses to allow the husband to approach her in that case don't you think the husband will be absolved from the guilt of killing a foetus.

A. But it presupposes that a wife will allow the husband.

Q. Is it laid down in Manu that in those circumstances he will incur no sin?

A. No.

Q. If this injunction is mandatory would it apply to a man who has got sons?

A. Yes.

Q. And will he be equally guilty if he does not approach his wife during the menstrual period?

A. Yes.

Q. Has it not been laid down that this *niyam* or rule applies only to a person who has no issue?

A. It applies to a man who refuses to go to his wife and produce children.

Q. Is it confined to a person who has no son born?

A. It applies to a man who will not obey and produce children; he will incur the sin.

Q. Does it apply to a man who has got one son?

A. Yes, once a child is begotten then this rule does not apply.

Q. You probably recognise that according to the Hindu Law there are three debts liable to be paid by all individuals. One of these is *Pitri* debt and that debt is paid by the production of an offspring?

A. Male offspring.

Q. Then the object of this obligation is that opportunity should be availed of by every individual to have a male offspring.

A. Yes.

Q. Is there a similar mandatory obligation on the husband if the wife is outside the menstrual period?

A. Yes, there is. If a woman is desirous then her desires should be fulfilled.

Q. Would you call this rule mandatory or would you call it a recommendation?

A. I would call it mandatory.

Q. Manu lays down that a man should offer libations day by day with water or with milk and fruits. Is this also a mandatory obligation?

A. Yes, orthodox people do it.

Q. He also says in the same chapter that a man should be devoted to self-study. Is that rule mandatory?

A. Yes.

Q. What difference do you make between mandatory and recommendatory injunctions?

A. Manu contains only mandatory injunctions.

Q. It is also stated by Manu that a man should not marry a girl who has an extra limb or finger or a girl who has no hairs or who is very talkative. Is this also mandatory?

A. Yes.

## Written Statements of persons not orally examined.

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**Written Statement of Rao Bahadur G. K. CHITALE, B.A., LL.B.,  
High Court, Pleader, Ahmednagar.**

1. There is no dissatisfaction with the state of the law as to Age of Consent as contained in sections 325 and 326, Indian Penal Code.

2. (1—2) From the practical point of view there are very rare cases under the Act, and the age mentioned therein even if retained or is raised as proposed, will in my opinion have no practical effect. In my 30 years of experience at the Bar or in my public life, I have not come across a single case of this nature which has either come to Court or which has come to my notice. The law is almost a dead letter and necessarily so inasmuch as even if it is transgressed, it rarely gets itself reported.

3. The offences are rare, almost in the whole Bombay Presidency. The law in my opinion is quite effective and the advance of public opinion, general education and other causes except perhaps in cases wherein old men get themselves married to young girls, the evil does not appear to exist on a large scale, especially in advanced classes, where the age of marriage of girls is steadily advancing.

4. My reply is in negative and it is questionable whether any measure would be effective in having the desired effect. Of course the real remedy lies in advancing the age of marriage beyond 13.

5. This usual age varies between 14 and 16. It does not differ in the different castes, communities or classes of society. But I am afraid that girls of advanced classes reach the age of puberty rather earlier than in working classes.

6. No. None of the cases have come to Court.

7. It has no religious injunction and in these days not much attention is generally paid to what religion requires but this question might better be left to Shastries who are well versed in the Shastras. I am speaking only from the practical point of view.

8. Garbhadan ceremony is usually performed after the attainment of puberty within about 4 months from that date. In the case of young girls where puberty is attained in rare cases below 13 years, the ceremony is usually postponed for a year or two.

9. I do not think that the attainment of puberty alone is a sufficient indication of physical maturity. Personally I should think that a girl in good health between the ages of 16 to 18 when the girl's physical developments may be safely considered to justify consummation without injury to her health or her progeny.

10. 16 to 18 years of age, provided her health is good and shows signs of normal development.

11. Yes, I have come across some cases referred to in this question and these were mostly cases of marriages in which disparity of age between the husband and the wife was noticeable. The injury in such cases is usually of some diseases which lead to consumption or womb diseases.

12. I do not consider that early consummation and early maternity are solely responsible for high maternal or infantile mortality. There are other potent causes such as poverty, early diseases, climatic influences and want of proper medical treatment at the earliest possible stage and want of cleanly habits in times of confinement and thereafter want of nutritious diet that do vitally affect intellectual and physical progress of the people; and I may add! educational courses which are ill-adapted, have no doubt this effect.



(13—14) My answer is in the negative.

15. In places where birth registers are properly kept no difficulty is found, but sometimes births are not registered and if proper attention be paid to keep these registers up to date no difficulty would be found.

16. No.

17. Yes, I would like to separate these offences, and in the case of marital offences, I am emphatically of opinion that there should be no substantive punishment.

18. I would make no difference in the procedure of trials for offences in either cases.

19. No additional safeguards are needed.

20—21. I would prefer to answer these questions together. In my opinion the progress of social reforms by means of education and social propaganda is undoubtedly a better remedy, and it would be in consonance with public opinion in my part of the country. Speaking broadly, early marriages are still the rule in backward classes which are in the majority. And so far as I have been able to observe, there is no such evil on a large scale which requires any penal measure. Even if the Age of Consent is raised or is retained at the age of 13 I do not believe it will have the slightest effect. And therefore it follows that fixing minimum age of marriage by legislation will be a more effective remedy but as the backward classes who are more numerous and illiterate are likely to feel these interferences in their social customs, I would rather not have any legislation. Whereas several causes are now fortunately combining to raise this age of marriage in several communities and though the progress is slow, in my opinion it is gradual but steady. Poverty all round and economical causes are having a wonderful effect on the habits and customs of the people, and at this stage, legislation is likely to be misunderstood as unjustifiable interference. Again there is no doubt that this is matter which affects the religious usage of communities and it is doubtful whether an alien Government pledged to religious neutrality should interfere in such matters. Of course, if the social evil is so great and widespread, state ought to interfere unless it is proved that it cannot be met by social reform and propaganda. Otherwise the state will not be justified in its interference, especially if it is likely to be on a large scale. No doubt, Hon. Sarda's Child Marriage Bill is a permissive measure, but there is no doubt that it is likely to disturb the religious and social amity of the people.

**Written Statement, dated the 6th August 1928, of Mrs. S. B. TYABJI, Satara.**

1. Yes. There is a good deal of dissatisfaction among people interested in the moral and physical conditions of the country. I have been present at several largely attended meetings of men and women—mostly Hindus—in Ahmedabad, where the opinion was strongly held that the "Age of Consent" should be raised to at least 14 and 16 years for infra and ultra-marital relations respectively. The ladies were unanimously of this opinion.

2. An advance on the present law is justified as being (1) a long delayed and urgently needed reform, (2) a necessary corollary of the recent advance in public opinion and of the forward movement in certain Native States.

3. Crimes of seduction are too common and common enough to be talked of in the bazaar in Ahmedabad and elsewhere and to form a real practical check of a serious nature against people of conservative notions sending their young girls outside their houses for education and recreation. The evil is therefore serious and urgent. Apparently therefore the amendment of 1925 has not been effective. One measure which I consider necessary to combat the evil is the abolition of houses of evil repute.

4. The amendment has been helpful in stimulating public opinion.

9. No. I should think that this would vary to an extent with individual girls. Considering that the bodily development of girls continues till as late as 19 to 21, it would seem that the strain of child-bearing and the mental strain of married life would adversely affect her normal development if the burden is placed upon her prematurely. The ideal age for the consummation of marriage is therefore over 19 to 21 according to the individuality of the girl and certainly the practical lower limit considering the present state of public opinion in India should not be lower than 16.

10. At the lowest possible, 16 years, though of course a proper realisation of the consequences comes much later.

11. Cases of cohabitation too early after puberty are unfortunately too common and I have had occasion to come across many of them and have noticed unmistakable signs of serious injury to health. I admit, however, that in these cases which are mostly in cities early cohabitation is one of the several causes leading to the breakdown in health. But I consider that it is a most serious one. I can mention a young girl of 16 who suffered from languor and back-ache and nervous breakdown and she had had several abortions. She was married soon after puberty. The woman was illiterate. Her child suffered from rickets.

12. I think this is so in the cities. I have no personal knowledge of villages.

14. Not among the more advanced classes nor among the Mussalmans as a rule.

20. I cannot say that penal legislation is likely to be more effective but I consider that it will be extremely helpful and is necessary. Although there will be a certain amount of opposition I think that public opinion is now ripe for advances along both these lines.

21. There must of course be education and social propaganda but the gains effected thereby already must be consolidated by legislation.

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**Written Statement, dated the 9th August 1928, of Mr. G. T. KONNUR,  
Resident Magistrate, First Class, Hubli.**

I have the honour to forward replies to the questionnaire called for in para. 2 of your letter No. 42-A. C. C., dated 25th July 1928.

2. I have confined myself to sections 375 and 376, Indian Penal Code, as the amendment of these is free from every objection and is not likely to arouse public opposition of any kind in case the amendment is made as regards the extra-marital offences only.

3. Mr. Sarda's Bill is likely to arouse public opposition as it introduces changes of somewhat revolutionary nature. I have not therefore taken that Bill into consideration.

*Replies.*

1. In the Karnatak no pronounced opinion is as yet formulated on the subject.

2. (1—2) The present law hardly serves the purposes which it is intended to serve. There are very rare cases of rapes committed upon *minor* girls in this part of the country which the present law was intended to prevent. It does not at all keep pace with the social advancement spontaneously effected for economic reasons, by spread of education and ineffective joint family system. I can quote a number of instances in which orthodox people of high caste Hindus have married their girls at the age of 18 because the would-be bridegrooms were engaged in higher education or because the selected bridegrooms were in pursuit of their future careers. Education is also materially helping to alter the old conditions. Division of the families has thrown the responsibility of maintaining it on every separated member whose income

has been greatly reduced on account of partition. The marriage of a divided member with the reduced means is almost beyond his reach. Under these circumstances, the girls have been forced to remain as maidens till advanced age and the society has begun to look with tolerance, at such instances. There would be no opposition even if the Age of Consent is raised within marital state and much less to the rise in age outside the marital state as the society looks with abhorrence at the offences against the tender sex. Yet the age within marital state need not at all be fixed. The Hindu religion has prescribed the Garbhadan ceremony (nuptials) at the age when the girl attains puberty. The girls in these parts attain puberty from 12 to 14 years of age. Attainment of puberty may therefore be safely fixed as the Age of Consent within the marital state as such fixity would be consistent with religious injunctions. The result of such legislation would be that consummation would take effect at the age of 14 in general, barring a few exceptions in which it might fall below or above that age in marital state.

To keep pace with the advancing social conditions, it is necessary that an advance should be made on the present law, the Age of Consent being fixed at about 18 outside marital state and attainment of puberty within that state.

3. Crimes of seduction and rape are committed now and then though they cannot be said to be of frequent occurrences. The amendment of law made in 1925 raising the Age of Consent to 14 has not produced any noticeable results of prevention or reduction of the cases of rape outside the marital state or the improper seduction of girls for immoral purposes. Such offences cannot be prevented unless the Age of Consent is very appreciably raised, say, at least to 18 years. For it is generally at the age between 14 and 18 that the girls are apt to be seduced because they are at that age very inexperienced and do not feel the responsibility of the marital state. In seduction cases the offenders generally set up a defence of consent of the girl through influence or bribery as the age of the girl is invariably in their favour. Under the present law the offenders would escape with light punishment for an offence of sexual intercourse with a married woman. Raising of the Age of Consent to 18 would bring such offenders under a very grave charge of rape entailing on them very prohibitive and exemplary punishments.

4. The amendment of 1925 as regards the consent within the marital state is a dead letter. Practically no case is brought to light. Arbitrary fixing of age within the marital state would not command the co-operation of the public. The amendment has not produced any of the results contemplated in the three sub-clauses. The age-limit fixed on the authority of the religion alone would command itself fully to the public who would in that case whole-heartedly co-operate with the authorities who are entrusted with work of its execution.

5. The usual age of girls to attain puberty is 12 to 14 in this part of the country. It does not differ in different castes, communities or classes of society.

6. (1) There are communities in which cohabitation is resorted to both before and immediately after puberty but education and public opinion have been killing the habit and custom.

(2) Generally common.

(3) Not common. Such cases do not come to the Court.

7. The religious injunctions are that consummation of the marriage, i.e., Garbhadan ceremony, should be effected after puberty and not before, and consummation is often postponed for various reasons in practice. There is no penalty prescribed by religion for such postponement which has been necessitated by the changed and the changing circumstances.

8. Garbhadan ceremony is invariably performed in this part of the country in some form or other amongst all classes of people. It coincides with the consummation of the marriage. It is performed after the attainment of puberty and never before and usually some time after such attainment.

9. Puberty alone is not a necessary index of a girl's fitness for cohabitation. But attainment of an age of 16 in this part may safely be considered to be a criterion.

10. Attaining age of 18 years.

11. I am not conversant with such cases.

12. Yes; but the whole blame cannot be ascribed to early motherhood only; it is highly intensified by ignorance and poverty.

13. *Vide* remarks under para. 2. There has been no development of public opinion in this part in favour of the extension of Age of Consent.

14. No.

15. No; because of the marital available.

16. No. Not all. It would be materially reduced if the age is raised to 18.

17. Yes. In case of extra-marital offences, the punishment at present prescribed would meet the ends of justice. For it is the terror of punishment that generally puts down such crimes. But in the case of marital offences the punishment should be of fine only; such cases should be cognizable only on the complaint of the girl injured or her parents or guardians.

18. Yes. Marital offences should be tried as far as possible by a first class Magistrate specially appointed for the purpose, option being given to the parties to be tried by the ordinary courts of Magistrates.

19. None.

20. Fixing of higher Age of Consent is as undesirable as the fixing of the minimum age of marriage for the reasons stated in paras. 2 and 3 above. Both the alternatives are repugnant to the public in this part and must be

21. I would not rely in the least on the strengthening of the Penal Law repugnant to every religiously-minded Hindu.

to secure the object in view though I have not the least objection to raise the Age of Consent outside the marital state as stated above. In my opinion, contribution by law to the progress already made is practically *nil*. Social reform by means of education and social propaganda is certainly commendable and it is this reform that has had its contribution to the good results already achieved.

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Written Statement, dated the 9th August 1928, of Mr. C. B. NAGARKAR, I.C.S., Assistant Judge, Poona.

1. Yes. I believe there is a certain amount of dissatisfaction with the state of the law. I gather this from articles appearing in the Press and speeches on public platforms. I, however, do not think that the dissatisfaction is very acute or widespread. As far as I can gauge it, it is confined to the higher educated classes and persons who come immediately in the sphere of their influence.

2. The circumstances which in my opinion justify making an advance on the present law are briefly as follows:—

(a) The proposed change in the law will be in keeping with the law in other civilized countries.

(b) A girl of 14 or 15 is undeveloped in mind and body and so she cannot possibly give "consent".

(c) The present law allows a married man to have intercourse with his wife if she is over 12 years of age. This causes injury to her health and body and also affects her progeny. This can be remedied if the law is amended.

(d) Girls become mothers and begin to rear children at 12 years when they ought to be at school. The present law therefore indirectly retards female education.

(e) I believe it is a mistake to say that on account of climatic conditions our girls mature at a comparatively early age. The period of maturity is normally between 12 and 15 years, which I think is also the period in other countries. If there is early maturity there is no justification for saying that it is *generally* before she attains the 14th year. This is virtually what the present section 375 of the Indian Penal Code implies.

(f) The present law is a blot on the Western standard of education and progress which we have adopted.

3. I append a statement showing the cases of seduction and rape which came to the Sessions Court, Poona, each year from the year 1917 to 1928. The figures show that on an average there was more than one case of seduction each year, and an average of more than 3 cases of rape each year. The figures show that on an average there was more than one case of the serious nature of the offence of rape I certainly think the cases of rape were frequent. Then, it has to be remembered that these figures only show *detected* cases of rape and seduction. We can never get the record of *undetected* cases—cases which for some reason or other were not reported to the Police and which therefore did not come to the Sessions Court for trial. My statement also shows separately the number of cases of seduction and rape each year from the year 1925 onwards. It would be difficult to say whether the amendment of the law made in 1925 has appreciably prevented or reduced such cases. The amendment is very recent and I do not think three years' experience of the amended law would afford sufficient data for gauging the effect of the amendment. For the above reasons I do not suggest any special measures to make the law effective.

4. It is very difficult to say whether the amendment of 1925 has been effective in protecting married girls of 13 years,—

- (i) by postponing the consummation of marriage. For this result to be achieved, I think we must allow more time to run, and cannot expect any appreciable change in 3 years' time. On account of the delicate nature of this subject it would be very difficult to get authentic figures;
- (ii) It has, however, stimulated public opinion in that direction. This is evidenced by the numerous public meetings of educated women held all over the country and the writings in the Press on this subject. Evidence of this can also be found in the storm of criticism which was evoked in this country by a certain book (now well-known) of an American lady;
- (iii) I do not think the amendment has resulted in putting off marriage beyond 13. But it can I think be safely said that one of the ultimate results of the amendment would be the putting off of marriage beyond 13.

5. The usual age at which girls attain puberty is I think between 12 and 15 years. I do not think the age differs in different castes and communities.

6. I have no definite information on this point. But I know that no such case has come to the Poona Sessions Court within the last 10 years. This does not, however, signify that there was no such cohabitation for it is extremely unlikely that such cases would be reported to the Police.

7. The practice of early consummation of marriage at puberty (wherever it exists) can I believe be traced to religious injunction. I have, however, not been able to trace any authority for this statement. But I believe the authority would be Hindu Law and religion which enjoins that a man must get married, marriage according to Hindu notions being a *Samskar* or consecrating rite which an Aryan owes to his ancestors (the authorities for this statement are: (1) the text of the Rishi Yadvavalkya quoted in the *Mitakshara*; (2) a text of Brihaspati quoted in the *Mayukh*; (3) Manu 11-67); being married the Hindu must have a son for his spiritual welfare. (The

authorities for this statement are well-known; they are *Yajur Veda*, *Manu Dattak Mimansa*, etc.) Children irrespective of their sex are considered conducive to spiritual efficacy as they free the Hindu from the torments of hell (*Dattak Mimansa*, III-3). And in early times children irrespective of their sex were taken in adoption. The practice of early marriages (which is the result of the admixture of races and the multiplication of castes and consequently was meant to be a check on undesirable unions), combined with the Hindu notions of marriage and the spiritual efficacy of sons and daughters, led to the practice of early consummation of marriage. (The authority for early marriages, that is before puberty, are the *Smritis* which prescribe a terrible fate for the father who does not marry his daughter before she has attained puberty.)

8. "Garbhadan" is performed in this part of the country. It is generally performed within a month or so after attaining puberty. But the ceremony of "Garbhadan" is not performed among the higher educated classes.

9. I do not think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I believe between the ages of 16 and 20 (i.e., roughly about 3 years after puberty) a girl's physical development may be considered to be sufficient to justify such consummation without detriment to her own health and that of her progeny.

10. In my opinion at the age of 16 to 18.

11. I have not come across such concrete cases.

12. I consider early consummation and early maternity to be largely responsible for high maternal and infantile mortality. But I do not deny that there are other contributory causes which have also to be taken into account—these are bad sanitation and social habits, diseases (such as plague, cholera, fever) and famines. All these have an adverse effect on the health of the mothers and in turn tend to increase infantile mortality.

13. I have seen some signs of a further development of public opinion since 1925. But I think this is not general but confined only to the higher educated classes. I have already referred above to various public meetings and articles in the Press. I take these to be an indication of further development of public opinion.

14. Orthodox and uneducated women in this part of the country seem to favour consummation of marriage as soon after puberty as possible.

15. As far as I am aware no difficulty has been experienced. There is not likely to be any difficulty in this matter and so I do not suggest any special measure. The birth and death registers in villages, and Municipal Birth Registers in cities would I consider be sufficient to prove the age of girls. The decision of cases would depend on the evidence produced.

16. The margin of error would be reduced if the age is raised to 14 years or above as it would enable a doctor to depose to the girl's age after examining her physical development.

17. Yes, I would adhere to the nature and amount of maximum punishment as laid down in Sir Hari Singh's Bill.

18. I would not make any difference in the procedure of trials for the two offences.

19. No other safeguards beyond those which now exist.

20. I consider that legislation fixing a maximum age of marriage is likely to be more effective than penal legislation fixing a higher Age of Consent. The former would be more easy to enforce than the latter which I do not think would be in consonance with public opinion. If a minimum age of marriage is enforced that removes the difficulty of fixing an Age of Consent.

21. I consider that the penal law should be strengthened. Social reform by means of education and propaganda is good in itself but reform by such means is a very slow process. In India education is advancing far more

rapidly than social reform and without strengthening of the penal law we shall not have the desired progress in social reform.

Cases of seduction up to 1925.	Cases of rape up to 1925.	Cases of seduction from the year 1925 to 1928.	Cases of rape from the year 1925 to 1928	Cases of rape by husband on his wife within last 10 or 12 years.
1	2	3	4	5
1917 . . . 1	1917 . . . 5	1925 . . . 3	1925 . . . 3	
1918 . . . 1	1918 . . . 3	1926 . . . 5	1926 . . . 5	
1919 . . . 1	1919 . . . 4	1927 . . . 0	1927 . . . 2	
1920 . . . 1	1920 . . . 4	1928 . . . 2	1928 . . . 3	
1921 . . . 1	1921 . . . 4			
1922 . . . 1	1922 . . . 3			
1923 . . . 2	1923 . . . 1			
1924 . . . 2	1924 . . . 2			

**Written Statement, dated the 9th August 1928, of Mrs. A. KAMAT, Sholapur.**

1. I believe every really educated person either is or ought to be dissatisfied with the state of the law with regard to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code.

2. (2) At the age of 14 a girl is hardly able to realize the full effects of her action while consenting to a man's having sexual intercourse with herself.

5. The average age of girls of the higher castes attaining puberty in my part of the country is 12 years. I do not know if it is different in the lower classes.

6. (1) I have heard of cases of cohabitation before puberty in the lower and even in the higher classes. I believe this practice is pretty common among the lower classes where often the husband is much older than his girl-wife.

(2) In the mofussil towns where the average age of a high class girl at marriage is 12, the cohabitation takes place soon after puberty, and

(3) There is nothing to prevent its taking place before the girl completes 13 years.

I do not suppose that the generality of these cases would ever go to Court, as the parties involved would hardly think of doing such a thing.

7. I attribute the practice of early consummation of marriage after puberty to long-standing custom rather than to religious injunction. I am not aware of any particular religious injunction making this early consummation compulsory, and the breach of the injunction punishable. Even supposing any such authority existed, I do not suppose it would count for much, as many such injunctions have gone out of count, *e.g.*, there is authority in the religious books to get a girl married at the age of 8; but in practice, this early marriage is not so common these days in the higher castes.

8. Yes, the "Garbhadan" ceremony is usually performed in my part of the country, and it coincides with the consummation of marriage. It is generally performed immediately after the attainment of puberty, where the girl happens to be married previous to the attainment of puberty. Among the really educated people, however, the marriage of a girl being postponed

now to a much later age than 12. the age at which the "Garbhadan" ceremony is performed is automatically pushed forward too.

9. No, the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage.

10. About 16, I believe; in any case, not before that.

17. Yes, I should separate extra-marital and marital offences into different offences.

20. I believe that legislation fixing the minimum age of marriage is likely to be more effective than penal legislation fixing a higher Age of Consent for marital cases.

21. At the present state of society I should prefer to rely on the strengthening of the penal law to secure the object in view, rather than on the progress of social reform, as I believe the latter course would be very, very slow in achieving the goal.

**Written Statement, dated the 11th August 1928, of Rao Bahadur  
W. G. RALE, Special Magistrate, Poona Cantonment.**

1. There is a dissatisfaction among more advanced classes with the existing state of law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code.

2. The prevailing practice with a male marrying a second wife while himself advanced in age (either after death of the first wife or in consequence of her not bearing any children, etc.) with a girl disproportionately younger in age leads the husband to try to cohabit with her before maturity and before she is well-developed. The girl in such cases is naturally under the influence of the husband and does not know the consequences of such early use. The results are that the girls either lose capacity to bear children and are subjected to retroversion, rupture of the Hymen Retroflexion, Endometritis, Antiversion, etc. If they conceive early, the children are rickety or consumptive and die an early death. Their mothers also develop consumption. Neither the parents of the girl nor those of her husband, if in existence, dare prevent the malpractice nor seek the course of law, although they do not approve of the folly of their sons and daughters. It is, therefore, necessary to make an advance on the present law. The age-limit of 13 in the exception to section 375, Indian Penal Code, should be raised to (14) fourteen years.

3. The crimes of seduction and rape are frequent among classes who have opportunities to mix with girls in course of their daily outside business in lower and illiterate classes. The amendment of the law in 1925 raising the Age of Consent to 14 outside marital state did not prevent or reduce the crime of rape nor has it reduced improper seduction as such laws hardly reach the notice of illiterate classes. It requires, therefore, the spread of primary education and publicity propaganda in illiterate masses to make the law more known and effective. The age-limit in such cases ought to be raised to sixteen (16).

4. The amendment of 1925 raising the Age of Consent within marital state to 13 years has been partially effective in protecting married girls against cohabitation with husband within the prescribed age-limit—

(1) by postponing the consummation ceremony,

(2) by stimulating public opinion, and

(3) by putting off marriage only in advanced classes.

The age-limit ought to be raised to (14) fourteen years now. A legal provision prohibiting marriages below 14 (and gradually below 15 and 16) would alone stop the evil entirely.

5. Girls attain puberty in this part usually at the age of 13 to 15. It does not differ with castes but it does differ with bodily constitutions and health.



6. Cohabitation is not common in this part in any class of people, (1) before puberty or (3) before the girl completes 13 years; but (2) it is common in all classes soon after the girl reaches puberty. Such cases do not generally come to Court.

7—8. There are no religious injunctions to my knowledge requiring early consummation in any case. There is a religious provision prescribing a होम sacrifice (fire worship) in connection with the consummation ceremony called गर्भादान provided by अश्वलायनक and याज्ञवल्क्य । I am informed that there is no mention on this subject in मनुस्मृतौ । The गर्भाधान ceremony has to be performed and is generally performed in this part before cohabitation on an auspicious day after a girl reached puberty (i.e., after she has begun to get the monthly course). A similar sacrifice or a गोप्रदान penance is provided for breach of that rule but it is scarcely observed.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. A girl may be considered physically well-developed to justify such consummation ceremony without fear of injury to her health and to that of her progeny when she completes her 16th (sixteenth) year and gets a regular monthly course.

10. A girl at the age of 16 would be competent in India to give an intelligent consent to cohabitation with due realization of its consequences.

11. I have heard of many cases during the last 50 years in which cohabitation after puberty but before full physical development of a girl resulted in injury to her health. I cannot quote special instances but it is well-known that in many cases where the girls were about 12 to 13 and the widower husbands married to such girls were over 30. The injuries in such cases were constitutional disturbances leading to fatal hæmorrhage, inflammation, peritonitis, gangrene, laceration of vagina, etc.

12. I consider early consummation and early maternity are responsible for high maternal and infantile mortality and deterioration of both intellectual and physical progress.

13. There is a development of public opinion in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925 but it is confined to advanced classes only.

14. Excepting ladies of advanced classes (who prefer later consummation of girls) women of this part favour consummation of marriage of their children immediately after the girl reaches puberty.

15. Difficulties in determining the age of girls in connection with offences under sections 375 and 376 are solved by ascertaining approximate age through the Civil Surgeon and by production of an extract from the village register of births. The difficulty will be removed by compelling ryots to report more punctually all births to the village officers and to municipal authorities and penalising the default.

16. Mere raising the Age of Consent to 14 would not reduce or minimise the difficulty of fixing exact age of the girl.

17. In marital cases the punishment provided by section 376A should stand but the age-limit should be not under fourteen years. In extra-marital cases the limit should be not under sixteen years and the punishment should stand as provided by section 376.

In the case of extra or non-marital offences the existing punishment of transportation for life or imprisonment of either description for 10 years with hard labour should continue.

18. In marital cases the offences might be made triable by a 1st Class Magistrate.

19. The present safeguards are enough.

20. A penal legislation fixing a higher Age of Consent for marital cases is likely to be immediately effective. Legislation fixing minimum age of marriage would be more effective but public opinion would be very strong against fixing the minimum age at once to 14 or 16. It would have to be gradually increased from 12 to 16 and it would therefore take more time but it should be provided by legislation beginning with 12.

21. The object in view would be secured more rapidly if in addition to strengthening the penal law, progress of social reform were made simultaneously by rapid spread of education and social propaganda advising villagers through village officers by vernacular circulars on the evil effects of early marriages, early consummation ceremonies, disproportionate marriages and on the recent provisions of law to avoid such evils.

**Written Statement of Miss ETHEL AMBROSE, M.B., B.S., Poona,  
and Indian Village Mission Hospital, Pandharpur.**

5. Girls in this part of the country attain puberty at 12 or 13 years of age. I think this applies to Hindus and Mahomedans alike, but I cannot say whether it differs in the different Hindu castes or communities.

6. (i) I am told that it is not uncommon for cohabitation to take place before puberty, among Hindus, if puberty is delayed.

(ii) Usually it takes place in this part of the country soon after puberty.

7. I am informed by a Hindu lawyer that there is religious authority for the early consummation of marriage at puberty, though the nature of this authority could not be stated. My informant stated that the penalty for the breach of this injunction is the performance of another ceremony in the 8th month of pregnancy.

8. I am told that Garbhadan ceremony is performed in this part by the backward or uneducated members of the Brahman community only—not by other castes. It takes place during the first 16 days after puberty, or if impossible then, a month later.

9. I think that at the earliest two or three years should elapse between puberty and the consummation of marriage so that the girl's physical frame may further develop, and become accustomed to the changes attendant on puberty, and she may be fitted for the strain of child-bearing and lactation.

10. This would vary with the mental and moral development from 14 to 17.

11. I can remember one case only of perineal tear in a girl of 12 or 13. I am unable to find any note of this case.

12. I do think so especially for mortality in children. In the case where the mothers have undeveloped bodies and immature minds they suffer strain, physical, mental and moral which must react upon the development of the progeny. They lack also, from youth and ignorance, a proper sense of responsibility towards their infants who may suffer neglect and even injury, and easily become a prey to disease.

14. The women with whom I have spoken on the subject object in theory to the early consummation of marriage for their children, but their plea is that social custom and the prevailing immorality make it advisable.

**Written Statement, dated the 10th August 1928, of Mr. S. A. NAIK,  
Judge of the Court of Small Causes, Poona.**

1. I do not think there is any general dissatisfaction with the state of the law as to the Age of Consent as contained in these sections.

2. The circumstances, which, in my opinion, justify making an advance on the present law, in so far as it relates to the Age of Consent outside the marital state, are the growth of public opinion against immorality and prostitution in general and the gradual social advance of the people. Within the marital state, however, I would retain the law as it is at present, although I would welcome legislation against early marriages.

3. Crimes of seduction or rape are not frequent in my part of the country. I do not think the amendment of the law made in 1925 raising the Age of Consent to 14 years has materially succeeded in preventing or reducing cases of rape outside the marital state or improper seduction of girls for immoral purposes. To make the law effective I would propose that the Age of Consent be raised to 16 years outside the marital state.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years has, in my opinion, been effective in protecting married girls against cohabitation with husbands within the prescribed age-limit by stimulating public opinion in the direction of putting off marriage beyond 13 and even 14 years.

5. In this part of the country girls generally attain puberty between the ages of 13 and 16 years. This differs in different castes and communities. Among the lower castes the age is generally higher.

6. Cohabitation is not at all common in this part of the country before puberty or before the girl completes 13 years. But when the girl is married, cohabitation commences soon after puberty.

7. I am not aware of any religious injunction prescribing early consummation of marriage before or at puberty.

8. The *Garbhadan* ceremony is usually performed in this part of the country. It coincides with the consummation of marriage and is performed soon after the attainment of puberty in the case of married girls.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify the consummation of marriage. I should think that a girl's physical development would not be enough to justify the consummation of marriage without injury to her own health and that of her progeny before the age of 18 and for at least 2 years after puberty.

10. I do not think that a girl in India would be competent to give an intelligent consent to cohabitation with a due realisation of consequences before the age of 18.

11. I am not aware of any cases in which cohabitation before puberty or after puberty, but before full physical development resulted in injury to the health or body of a girl or prejudicially affected her progeny.

12. I consider early consummation of marriage and early maternity responsible for high maternal and infantile mortality and for general intellectual and physical deterioration.

13. I think among the educated classes public opinion favours raising the Age of Consent to at least 16 years in extra-marital cases.

14. Women in this part of the country do not favour early consummation of marriage for their children.

15—16. I am not aware of any difficulties having been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code.

17. I would separate extra-marital and marital offences into different offences. I would prescribe the same maximum punishment for each kind of offence that is at present prescribed by the Penal Code.

18. I would not suggest any change beyond what exists at present in the procedure of trials for offences within and without the marital state.

19. I would not suggest any safeguards beyond those existing at present.

20. I think penal legislation fixing the minimum age of marriage would be more effective than legislation fixing a higher Age of Consent for marital cases. Legislation fixing the minimum age of marriage at 14 for girls and

at 18 for boys would, I think, be in consonance with public opinion in this part of the country.

21. In extra-marital cases I would rely on strengthening of the penal law to secure the object in view. In marital cases I would rely on the progress of social reform by means of education and social propaganda. Various causes are combining to prevent early marriages, and no penal legislation fixing a higher Age of Consent for marital cases appears at all necessary.

**Written Statement, dated the 13th August 1928, of Mr. M. D. BHAT,  
I.C.S., Sholapur.**

1. Yes, but the dissatisfaction prevails only among a small minority of educated and westernised Indians.

2. (i) In my opinion reform of the law of the Age of Consent is not very essential to the social or political progress of India.

3. No. As a Magistrate I have had occasion to deal with only two cases of rape during the past six years.

4. No.

5. From 12 to 15. The age at which girls in India attain puberty differs very slightly in this part of India. In my opinion the difference depends upon individuals and not on communities or castes.

6. (i) Exceedingly rare.

(ii) Yes, common.

(iii) Very rare.

Such cases do not usually come to a Court.

7. The practice of early consummation of marriage is the result of age-long social custom and is not founded on the authority of any religious scriptures. No penalty is imposed by religious injunction for its breach but the fear of public scandal and social ostracism acts as a potent factor in compelling ordinary people to submit to it.

8. Yes. It generally coincides with the consummation of marriage. It is usually performed soon after the attainment of puberty.

9. No. Girls in India attain puberty much earlier than in other parts of the world. Their physical development is not complete before the age of 16. Consummation before 16 is therefore usually attended with serious consequences to themselves as well as to their progeny.

10. At the age of sixteen (complete).

11. Yes, I know of a few cases in which girls owing to early consummation and confinement have completely ruined their health. Cases are not rare in which early and successive confinements have resulted in consumption with fatal consequences to both the child and the mother. The effect of early consummation on a child is not, however, so harmful as is generally supposed as its healthy development after its arrival depends to a large extent upon its proper nourishment and care. However there is no doubt that early confinements tend to deteriorate slowly the physique of the race.

12. In absence of knowledge of the methods of birth control, early consummation must lead to early maternity. The latter is to a very large extent responsible for high infant and maternal mortality. It leads slowly but surely to the physical and intellectual degeneration of the people.

13. Yes, but the development is infinitesimal and is confined to a very small class of persons who hold advanced views.

14. Yes, the uneducated women who are at present in overwhelming majority do.

15. No. However it is suggested that whenever possible the girl should be examined by a qualified lady doctor.

17. Yes, so long as legislation penalising marriage below a fixed minimum is not passed. Till then the existing difference in the punishments is in my opinion adequate.

18—19. No.

20. I consider that legislation penalising marriage of a girl under 16 (complete) and of a boy under 20 (complete) would be more effective in accelerating an all-round progress of the country than any improvement in the existing law of the Age of Consent. This view is held by a large section of educated Indians many of whom also favour the reform of the law of the Age of Consent. I think that though both these views are advocated by a very small minority of people, the number of persons who believe in the efficacy of penal legislation regarding marriage is greater than that of the persons who are supporters of Sir Hari Singh's Bill.

21. I have no doubt that penal legislation in respect of marriage would be more effective than education and social propaganda in promoting an all-round development of the country. Prohibition of the custom of *Sattee* by law is a vivid example of the efficacy of legislation and the futility of depending upon the social conscience of the people.

**Written Statement, dated the 14th August 1928, of Mr. E. WESTON,  
I.C.S., Sessions Judge, Poona.**

1. I think public opinion is weak except perhaps among the higher classes.

2. I consider that the creation of stronger public opinion is essential before a further advance in penal legislation is made. One of the fundamentals of criminal legislation is that the act made a crime should be one which the general public consider to be wrong and deserving of punishment.

3. Fairly frequent. To a certain extent only. I do not consider punishment has much deterrent effect in such cases except on the particular offender.

4. (1) Very doubtful.

(2) To a small extent probably.

(3) Very doubtful. I think the only solution is stimulation of public opinion by other means to increase the age of marriage.

5. About 12 to 14 years apparently among what may be called the lower classes.

6. (1) Yes.

(2) Practically always.

(3) As in (1).

Evidence of these matters only comes out in Court indirectly, on medical examination of complainant girls in rape cases or in suits for restitution of conjugal rights. In a recent case here a girl probably about 13 years old stated that she had not attained puberty but admitted intercourse with her husband and was stated by the medical officer to be habituated to sexual intercourse.

7. It is a matter both of religious injunction and age-long custom which has practically the force of religion.

8—9. I do not offer any opinion.

10. Undoubtedly they know what it means at a very early age. I have heard a Sub-Medical Officer express the opinion that at the age of 8 in the agricultural communities nothing is unknown.

11—12. Medical. I do not offer any opinion.

13. Yes, chiefly among educated classes.

14. I have no definite knowledge.

15. Yes. Medical officers appear to be more definite at 15 than 14 and more definite at 14 than at 13. Theoretically on account of birth registration

there should be no difficulty in determining age, but in practice on account of omission to enter the child's name in the register and the fact that a child is often an annual event it is often impossible to connect a particular child with a particular entry.

16. As above.

17. Yes. I have never heard of a prosecution for a marital offence. Personally I think at the present stage of public opinion a maximum of three months for marital offences should have been fixed.

18. As in 17. Marital cases would be summons cases.

19. No.

20. I do not think either would be effective at present.

21. I feel very strongly that further strengthening of the penal law at present is undesirable.

**Written Statement, dated the 14th August 1928, of Mr. M. A. PHANSE, District Deputy Collector, Satara.**

1. No.

2. In the rural communities the girls do not attain puberty early. They are generally robust in their constitution and get plenty of free air and good manual exercise in labour. Hence it is noticed that they attain puberty at about 15 years or 16 even. In the case of higher and educated societies the female education is spreading and the girls have no desire for early marriages. They are found several times weak in constitution and averse to taking physical exercise. They attain puberty at the age of 13 or 14 and it is quite necessary to raise the marriageable age by 2 years in order to allow time for the development of their health and physique. At present the marriage in higher societies takes place after the girls are 16 or over 16 years old. All these circumstances justify an advance on the present law.

3. The crimes of seduction or rape are frequent among rural population in the harvesting season. It is because boys and girls get plenty to eat and then they are in full health and vigour. The amendment of law made in 1925 has some effect no doubt in reducing the rape cases. The raising of the Age of Consent will go to improve things further. It will certainly prevent the improper seduction of girls for immoral purposes.

4. The amendment of 1925 has been greatly effective in protecting married girls against cohabitation with their husbands within the prescribed age-limit generally by putting off marriages till the girls are aged 13 or more.

5. Reply is contained in the reply to query No. 2.

6. Cohabitation is common among all the classes of people soon after puberty. It is very rarely before puberty. Such cases never come to Court.

7. No.

8. Yes. It coincides with the consummation of marriage or takes place some months after such consummation. Nowadays this ceremony is being dropped altogether when the marriage of a girl takes place after the age of 16. It is performed always after the attainment of puberty and 4 or 5 months or even 1 year after it. But consummation of marriage begins before the ceremony takes place.

9. The attainment of puberty is a sufficient indication to justify consummation of marriage. However, it is considered that a year or so after puberty is required for the full physical development of a girl.

10. If an intelligent consent is required from a girl she should be about 18 to 20 years of age.

11. Cases were noticed about consummation of marriage after puberty but before full physical development of a girl. The result was consumption and early death.

12. I consider it partly responsible. Poverty is one of the factors to be considered along with it. Early maternity affects the intellectual and physical progress of the people, because the young parents are not so free in their thoughts and mind at the time of early consummation and their progeny as a result is less intellectual in mind and less strong in physique.

13. People generally and higher classes of people specially are against early marriages and opinion is being formed that marriages of girls should not take place before they are 16 years of age. There are exceptions, *e.g.*, Marwaris, who though they have raised the standard of the marriageable age of their girls, still get their daughters married at the age of 12 or 13.

14. Not before a girl attains puberty.

15. Not generally. The birth and death register which is maintained in every village and municipality serves the purpose very well.

16. Yes.

17. Yes. For extra-marital offences the punishment prescribed in section 376, Indian Penal Code, appears adequate. For marital offences as put down in new section 376A, I think the punishment of imprisonment should not be awarded. Punishment of fine will be quite sufficient. If a husband is sent to jail for the sake of his wife, the marital happiness is very likely to suffer when he returns from jail.

18. Yes. The trial under section 376, Indian Penal Code, may be conducted according to the present procedure. But the trial under new section 376A should not be openly made in the public but it should be made in a semi-private manner in the presence of the relatives of the husband and wife and in the presence of persons against whose attendance the husband and wife have no objection to raise. The ease should be allowed to be compounded or withdrawn if it is first offence.

19. No.

20. I think penal legislation is likely to be more effective than the other course suggested. It will also be in consonance with the public opinion in this part of the country.

21. Both together hand in hand.

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**Written Statement, dated the 15th August 1928, of Mr. K. B. WASSCODEW, District and Sessions Judge, Bijapur.**

1. In my opinion the public are indifferent as to the state of law regarding the Age of Consent as contained in sections 375 and 376, Indian Penal Code. There is no dissatisfaction manifested by the public with regard to the provisions of the exception to section 375 inasmuch as there is hardly any likelihood of its provisions being brought into force against a defaulting husband. There is reason to suppose that a large majority of Indian girls are married before they attain puberty and the consummation of marriage follows before they attain 13 years.

2. In my opinion as a question of practical expediency any change in the law of consent within marital relationship is futile unless it is accompanied by a penal provision against early marriages. The State should make it penal on the part of the parents and guardians to marry girls under 14. (This suggestion the Committee will note goes even beyond Sarda's Bill.) Even Sarda's Bill will not suffice to make section 375 a living one either amended or as it is. As regards intercourse outside the marital relationship the Age of Consent should be raised to 15.

3. In this part of the country the crime of seduction and rape are seldom brought to light. I am given to understand that the standard of morality is not high and seduction has often led to murders. The seduction of young girls is not frequent. It is not possible within a short experience of the working of the new law to suggest remedial measures.

4. As already remarked in my reply to No. 1 the amendment of 1925 raising the Age of Consent within the marital state to 13 years has not, I

have reason to believe, been found effective in preventing consummation of marriage before the prescribed age. The public opinion is quite dormant. Marriages are not put off beyond 13. Child marriages are as common as before. The force of custom is very strong. It might even be difficult to refuse sanction for the marriages of young wards of Court. The only remedy is to make child marriage below 13 and 14 penal.

5. I have no experience.

6. Cohabitation before puberty is rare. Soon after puberty is quite common and in that case it is immaterial whether the girl is below or above 13. Such cases have never come to the Court.

7. I attribute the practice of early consummation of marriage immediately after puberty to religious tenets. These religious tenets are not necessarily prescribed in express words. The beliefs are the outcome of long usage. It is considered in this part of the Presidency that as a religious rule the husband should consummate the marriage within 16 days of the first date of menstruation. For the breach of this rule there is no specific secular sanction but the husband's omission is considered reprehensible and is supposed to be guilty of causing abortion in the eye of the religion just as a father delaying the marriage of his daughter till after puberty is supposed to be guilty of causing abortion. No doubt the husband or a father can get redress by performing certain expiatory ceremonies.

8. Garbhadan ceremony is usually performed in this part of the country amongst the higher classes. Garbhadan means the initiation of the rite of impregnation which necessarily implies the consummation of the marriage on the day on which it is performed. It is performed generally within 16 days after attainment of puberty.

9. Attainment of puberty is one indication of physical maturity but not always a safe indication and if medical opinion of other countries is accepted attainment of puberty would not justify consummation. The second question would depend on the constitution of the girl but the age-limit should be fixed at 16 years if not more.

10. In my opinion a girl of 17 or 18 is competent to give an intelligent consent to cohabitation and in many cases with due realization of the consequences.

11. The physical state of the majority of Indian mothers is a sufficient illustration of the bad effects of early consummation of marriages. It is unnecessary to give details.

12. Yes. Do.

13. No.

14. Yes. Ignorant and uncultured mothers love the idea of possessing grandsons or granddaughters as early as possible.

15. Almost in all cases when the age verges on the prescribed limit. The only measure recommended is a more thorough maintenance of birth statistics.

16. No.

17. I would not. When once the Age of Consent is fixed there is no reason why there should be any differentiation if the cohabitation is by the husband with his wife below the Age of Consent.

18. No. There need not be any difference in the procedure of trials for such offences.

19. It is difficult to give any practical suggestion.

20. There is really no public opinion properly canalised in any progressive direction. I have already said that the fixing of the Age of Consent is ineffective to prevent early consummation of marriage. The minimum marriageable age should be raised to 15 or 16 in the case of girls.

21. It will take ages if this question is left merely to the progress of social reform by means of education and social propaganda. The State ought to act fearlessly. Mere amendment of the sections 375 and 376, Indian Penal Code, will not help in the least in bringing about the desired reform.



**Written Statement, dated the 17th August 1928, of Mr. K. A. GHASWALLA, Bar.-at-Law, President, Poona Bar Association, Poona.**

1. Yes, but it is only limited to educated classes.
2. There are circumstances which in our opinion justify making an advance on the present law.

These are:—

(a) That the Age of Consent is not so low in any civilized country in the world except India, that age being everywhere not below 16.

(b) The advance made in the year 1925 is not at all adequate.

3. Crimes of seduction or rape cannot be said to be frequent in our part of country, though seduction is more frequent than rape—the schedule showing cases in the Sessions cases of Poona is attached herewith. It is difficult to say whether the amendment of 1925 has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purpose.

The cases which are detected and which come to court are not the only cases of commission of the offences. There are grounds to believe that number of undetected cases is more than those of detected cases.

The measures that we would propose to make the law effective on this point are:—

Wider application and a much wider enforcement of the Prevention of Prostitution Act.

4. We do not believe that the amendment of 1925 raising the Age of Consent has been effective in protecting married girls by any of the three means that are mentioned in these questions, but various other causes such as economic have been working to put off marriage beyond 13 and we do not propose any steps by way of legislation on these particular matters as detection of such offences, namely those within the marital state, will always remain extremely difficult.

5. The usual age at which girls attain puberty in our part of the country is between 12 and 14 but it differs in the classes of agricultural community in which cases it is little higher.

6. Cohabitation before puberty or soon after puberty or before the girl completes 13 years is not at all common in our part of the country in the educated classes but it is still not uncommon in the uneducated classes. Such cases rarely come to the court at all in the case of married couple.

7. It cannot be said that the practice of early consummation of marriage is due to religious injunction only, it is more probably due to custom rather than religion.

8. Garbhadan ceremony is usually performed in our part of the country and it is generally performed soon after the attainment of puberty. No general rule can be laid down as to the time after puberty within which it is the practice to perform the ceremony.

9. We do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation. We are of opinion that the girl's physical development would require at least 2 or 3 years for her physical development to be considered enough to justify consummation.

10. The least age of a girl in India to be competent to give an intelligent consent to cohabitation with a due realization of consequences is in our opinion "16" years.

11. During our experience we have come across cases in which cohabitation before puberty has resulted in injury to the health of the girl.

12. We are of opinion that early consummation and early maternity is one of the principal causes of high maternal or infantile mortality. There is no doubt that there are other causes, general poverty, want of sanitation, prevention of epidemic, etc., equally or perhaps more potent, but this particular cause is also one which cannot safely be neglected.

13. There has been a development of public opinion in our part of the country in favour of the extension of Age Consent in marital and extra-marital cases since 1925, but such development is only confined to the educated classes.

14. Women belonging to the advanced classes in our part of the country do not favour early consummation of marriage of their children, but the number of such women is of course small.

15. There have not been any peculiar difficulties in determining the age of girls in connection with offences under sections 375 and 376, Indian Penal Code, but we are of opinion that such little difficulties as are experienced because of medical officers not being able to form a definite opinion as to age would be minimised by fixing the Age of Consent at 16.

16. The margin of error in our opinion would be slightly minimised if the Age of Consent is raised about "14" but perhaps this is a matter more for medical experts to decide.

17. We would prefer a separation of extra-marital and marital offences into different offences and we would propose maximum punishment for the latter to be 3 years' imprisonment of either description.

18. The only difference that we would make in the procedure of trials of offences within the marital state is that we would make these offences bailable.

19. We have no suggestions to make for any safeguards beyond those existing at present, against collusion to protect the offender, but against improper prosecution or extortion we would like to suggest that no investigation be made into such offences by any police officer below the Deputy Superintendent of Police.

20. We consider a penal legislation fixing the higher Age of Consent, etc., is more effective than legislation fixing the minimum age of marriage. We are of opinion that the first alteration would be more in consonance with public opinion in our part of the country.

21. We would prefer to rely on the strengthening of the penal law to secure the object in view rather than on the progress of social reforms.

*Cases of abduction and rape.*

Year.	Cases of seduction up to 1925.	Cases of rape up to 1925	Cases of seduction from 1925 to 1928.	Cases of rape from the year 1925 to 1928.	Cases of rape by husband on his wife within last 10 or 12 years.
1917 . .	1	5	.	...	..
1918 . .	1	3	..	..	...
1919 . .	1	4	.	...	...
1920 . .	1	4	...	...	.
1921 . .	1	4	.	...	...
1922 . .	1	3	.	..	.
1923 . .	2	1	...	...	...
1924 . .	2	2	...	...	...
1925 . .	...	...	3	3	...
1926 . .	.	...	3	5	..
1927 . .	...	...	.	2	..
1928 . .	...	.	2	3,	..

**Written Statement, dated the 14th August 1928, of Mr. R. R. DIVEKAR, District Deputy Collector, Karwar.**

1. It is doubtful whether the provisions of law as amended in 1925 are yet known to the mass population and consequently the popular feelings cannot be gauged.
2. The law of the Age of Consent as it is may be retained for the present inasmuch as in this part of the country consummation of marriage generally takes place even among low and illiterate classes after the married girls attain puberty and as married girls attain puberty generally at the age of 14. Making an advance on the present law within so short a period after the last amendment may give rise to dissatisfaction among the low castes and illiterates. The advance may be made with the changes in the mode of life which could be brought about by education and general changes in the times.
3. Cases of seduction or rape outside the marital state are scarcely brought to light and court. It is difficult to detect these offences within or without marital state and to state with accuracy the results achieved by the amendment of law.
4. No. At present there is no restriction placed by law upon marriages and the people are at liberty to marry their girls at any age. The question whether any provision should be inserted in the law regarding age of marriage depends on the question whether there is popular demand for the same and whether it would not wound the religious susceptibilities of the people. I would propose that instead of placing any restriction as regards the age of marriage, it should be laid down that consummation of marriage should not be done before the age of 16 years.
5. The usual age is 14. I do not think that this differs according to castes.
6. Within the marital state, cohabitation of married girls with their husbands is common soon after puberty. Cohabitation before puberty between husband and wife is not common. Cohabitation is possible between a married girl of 13 years with the husband if the girl attains puberty at that age and the consummation ceremony is performed soon after puberty.
7. Yes. The injunction of early consummation of marriage at puberty is not mandatory, but advisory from a religious point of view and no penalty is imposed for its breach by the religious heads. At least among the Hindus according to the Hindu religion a girl must be married before she attains puberty. Otherwise the father commits sin in the eyes of the Hindu religion.
8. Yes. Among the high class Hindus the Garbhadan ceremony is invariably performed after the attainment of puberty and even immediately after the fact. It coincides with the consummation of the marriage.
9. No. The attainment of puberty depends upon the constitution of the girl. At the age of 16 years.
10. At the age of discretion, namely 16 years.
11. The medical men will be able to answer this.
12. Yes.
13. No. See my answer to question 1.
14. Generally they do not among the educated or advanced classes.
15. No. The age of girls could be proved by the production of extracts from Birth Register.
16. This can be answered by medical men.
- 17—18. The extra-marital offences should be separated from marital offences. The punishment provided in the first part of section 376 (as it now stands) appears sufficient for the former offences and that in the second part for the latter offences which should be triable by a Presidency or First Class Magistrate.

19. No. Additional safeguards appear necessary.

20. I think legislation fixing a higher Age of Consent for marital cases is likely to be more effective than the legislation fixing minimum age of marriage. This would be in consonance with public opinion in this part of the country. Legislation fixing a minimum age of marriage would be resented by orthodox people as placing undue restriction on their right of marrying their girls at their own convenience and according to their religious tenets, while raising the Age of Consent would not in any way interfere with their inherent right of marriage, but would protect the girls from the evil effects of early cohabitation before physical maturity.

21. I think we should rely on both.

**Written Statement, dated the 22nd August 1928, of Mr. DADIBA C. MEHTA, M.A., LL.B., District and Sessions Judge, Ahmed-nagar.**

1. There is dissatisfaction with the state of the law regarding the Age of Consent; but it is confined to a very small section of the public.

2. None.

3. Crimes of seduction or rape are fairly common in this District. I do not however think that the raising of the age has had any material effect in reducing the number of such cases. I do not think that any further raising of the Age of Consent will minimise the evil of seduction or rape. The persons who are guilty of such offences are in most cases ignorant people who have not the faintest notion of what the law on the point of Age of Consent is.

4. I am not in a position to give any opinion on this question. I belong to a community in which early marriages are exceptions.

5—8. I regret I cannot express any opinion on these points as I have no experience.

9. The opinion of a medical expert, I submit, would be more advisable instead of any empirical opinion I may express.

10. I would put down the age of intelligent consent between 16 and 18.

11. No. None.

12. Yes, that is the common belief of most educated people.

13. In the Bombay Presidency I have heard of Associations of ladies taking greater interest in this question than Associations of the other sex. The former do certainly clamour for an extension.

14. Yes. Amongst the backward communities.

15. The usual difficulties have been experienced; but they have not been found to be insurmountable except in very rare cases.

16. I am afraid I do not think so.

17. I have no decided opinion on the point.

18. I fail to see the necessity of any difference being made.

19. Practicability enters into the consideration of this question. I do not think that any special safeguards can be devised.

20. Fixing a minimum age of marriage is so far as I can read the temper of the country a goal not possible to be reached. Penal legislation fixing a higher Age of Consent for marital cases is therefore the only alternative left.

21. I would prefer to rely on both, particularly the latter.

Written Statement, dated the 24th August 1928, of Mr. M. H.  
LIMAYE, First Class Sub-Judge, Satara.

(1) There was a time when a legislation, on the subject in question, could not have even been seriously thought of, owing to the sort of adverse sensation it would have given rise to. But, happily, that time is long past, and, now, Society in general is not only not adverse to a salutary legislative step being taken, in the matter of the subject in hand, but is eager to have a safeguard, which without imperilling the peace, harmony and good relations of the families in general would conduce to the mental, moral and material well-being and progress of the same. People, in general, at all events the enlightened and reasonable section of the same (and obviously, it is this latter that really counts, or ought to count), are now almost unanimous that on physiological grounds, alone, there ought to be a substantial increase in the present Age of Consent. But, even apart from these grounds, there are other reasons, which may well be said to justify an advance on the present law of the Age of Consent. Social conditions of the present day are, it may not be wrong to vouch, quite different from what they were, say, when the legislation regarding Age of Consent was enacted in the year 1891. Firstly, there has been a slow but steady rise in the age of marriage of girls, almost all round. Secondly, owing to the increase in the general popularity of education, if not also higher education, among females, girls remain unmarried till a later age. Thirdly, the relative scarcity of finding a suitable groom has not a little contributed to increase in the age of marriages of girls. Owing to changes in the economic conditions of the country (though this view applies more aptly to the towns and cities) there has been a growing increase in the employment of women in mills, factories and other (kindred) occupations. The inevitable result is that young girls move about far more freely, and the bonds of old restrictions on social intercourse are fast relaxing, if not entirely disappearing. The consequence is transparently plain, and it is that minor and inexperienced girls can well be said to be more exposed to risks and temptations than heretofore.

(2) In view of all these considerations and circumstances, it seems almost absolutely necessary (at all events, a good case is made out) to revise the law of the Age of Consent, not only on physiological grounds, but also in the interest of the personal safety and well-being of the girls.

(3) But, side by side, I must sound a note of warning, by pointing out the distinction that must scrupulously be drawn and kept in view between "marital" cases and the other ones. These two ought never, I submit, be kept on a par. Nay more. Apart from matters religious, people in general would resent any interference of law in "marital relations" even distantly. They do want reformation, no doubt, but not "at any cost". They would not like to have complications springing from any piece of legislation, however well intentioned, that would strike at the very roots of peace and harmony of the family or between husband and wife, which latter is a relation held most sacred in the heart of hearts by the general public. People would not resent if the age of marriage is raised compulsorily by legislation, say up to 14 or even 15 years. But any attempt to increase Age of Consent in marital cases would, I am afraid, lead to unhappy results, and would be a hot-bed of unwelcome complications. Here, Mr. Sardar's Bill may well be taken advantage of, and, when the marriage of a girl or boy, below a particular age itself, would be made penal, it obviously and automatically would dispense with the necessity of raising the Age of Consent in marital cases.

(4) The net result of my suggestions, to put shortly, thus, is that in the case of strangers the age must and should well be increased even to 18, so as to bring it upon a par with the age of "majority". It may well be argued, in support of this view, that, whereas a person should be legally held to be incompetent to contract in regard to his or her "property",

her "consent" should (indirectly) be legally sufficient, when she is made to "play" fast and loose with her "person". Now it does not require much stressing to demonstrate which is superior to which, viz., power of disposition of "property" and power of disposition of "person". Law must protect both. If so, the Age of Consent, regarding strangers, can well be raised, if not ought to be raised, to "18" and the Committee would be quite on safe ground in its attempt to do so. But, as regards marital relations, the only safe, sound and sure way would be to penalize marriages below a particular age, say even "15".

(5) I would have no objection to my being orally examined at some place near about Poona or Bombay, if not these two places themselves, or near either of them. But, I am afraid, I would scarcely be able to enlighten the Committee any more than what I have attempted to do by laying my humble view hereby. Before I proceed to answer the questions, I must say that I am a Civil Judge, and had nothing to do with criminal cases or prosecutions. I was however Honorary Assistant Government Pleader and Public Prosecutor for 4 years; but really, it is the learned members of the local (Satara) Bar to whom I am greatly indebted for readily laying their valued knowledge and experience at my disposal in answering these questions and for making such suggestions which, right or wrong, I have ventured to make, as above, for such consideration as the Committee may be pleased to give to them.

#### *Answers to Questionnaire.*

1. Public would resent interference by legislation with regard to marital relations. There is no question of satisfaction or dissatisfaction as there have been no cases of the kind.

2. (1) I think that it may not be wrong to say that there are no circumstances justifying the place which the "Age of Consent" has found in the penal law, in marital cases. In extra-marital cases, legislation is necessary, as girls of immature age must be protected.

(2) An advance in Age of Consent in extra-marital cases is desirable for reason given above.

3. Crimes of seduction or rape are not frequent here. As the number of such crimes is small, the amendment of law has no effect, as such, either way. Reformation may be made as indicated above.

4. In usual routine, there is no consummation before 13. No steps to make this law effective are necessary, except as is indicated at the outset.

5. The girls generally attain puberty between 13 and 14. There is no appreciable difference in this respect in the different castes and communities.

6. (1) No.

(2) Yes.

(3) No, before the girl completes her thirteenth year.

(4) No case has come to court in our District.

7. (1) There is no consummation of marriage before puberty as a general rule.

(2) At puberty consummation is attributed to religious considerations. As for authorities *vide* याज्ञवल्क्य स्मृति आचाराध्याय, verses 79, 80 and 81, and more particularly Vijnaneshwar's commentary on verse 81. Also

ऋतुस्नातांतु यो भार्यां सन्निधीनोपगच्छति ।

घोरायां मूणहत्यायां युज्यते नात्रमं शयः

8. Garbhadhan is usually performed and it is after puberty according to convenience of parties.

9. The attainment of puberty is generally considered as a sufficient indication of physical maturity, so far. The consummation is however usually formal, and there is not regular married life until the girl attains the age of 16 or more.

10. The reply to this question is dependent on the education of the girl, her environments, and her opportunities of gaining experience. "The intelligent consent to cohabitation with a due realisation of the consequences" does not depend upon age, as a rule, but age is no doubt an important factor.

11. No.

12. No. There are other vital factors requiring serious consideration.

13. No.

14. Women proceed in their usual routine, and specially favour consummation at an early age.

15. The difficulties contemplated by this question do exist, but have no reference to the "Age of Consent". To obviate the difficulty, to a certain extent, the law of registration of births should be enforced more rigorously.

16. *Vide* reply to question 15.

17. There should be separation of sections, and offences in marital cases should only be punishable with fine, which may extend to Rs. 100. Substantive punishment to the husband is a punishment to the wife also, and the law which seeks to protect girls will have the effect of ruining them; *vide* my opening remarks.

18. In marital cases, no courts should be empowered to take cognizance of this offence unless a complaint is filed by either of the parents of the girl. It should be non-cognizable and bailable.

19. For safeguards for improper prosecution and extortion, we have suggested the remedy in our reply to question 18.

20. Any legislation in such matters would be strongly deprecated.

21. The progress of social reform by means of education and social propaganda would do the needful. Legislation in this matter would be unwelcome as already indicated.

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### Written Statement, dated the 27th August 1928, of Mr. S. G. KHAR-KHAR, President, Bar Association, Satara.

1. Public resent interference by legislation with regard to marital relations. There is no question of satisfaction or dissatisfaction as there have been no cases.

2. (1) We think that there are no circumstances justifying the place which "Age of Consent" has found in the penal law, in marital cases. In extra-marital cases legislation is necessary, as girls of immature age must be protected.

(2) An advance in Age of Consent in extra-marital cases is desirable for reason given above.

3. Crimes of seduction or rape are not frequent here. As the number of such crimes is small, the amendment of law has no effect either way, and no suggestions are necessary to make the law more effective.

4. The "Age of Consent" is never considered or discussed by any section of the public. In usual routine, there is no consummation before 13. No steps to make this law effective are necessary. The girls generally attain puberty between 13 and 14.

5. There is no appreciable difference in this respect in the different castes and communities.

6. (1) No.

(2) Yes.

(3) No—before the girl completes her thirteenth year.

(4) No case has come to Court in our District.

7. (1) There is no consummation of marriage before puberty.

(2) At puberty, we attribute consummation to religious considerations.

As for authorities *vide* याज्ञवल्क्य स्मृति । आचाराध्याय । verses 79, 80 and 81 and more particularly Vijnaneshwar's commentary on v. 81, also.

ऋतुम्नातांतु यो भार्यां सन्निधौनोपगच्छति ।

घोरायां भ्रूणहत्यायां युज्यतेनात्रसंशयः ॥

8. Garbhadhan is usually performed and it is after puberty according to convenience of parties.

9. We consider that the attainment of puberty is a sufficient indication of physical maturity. The consummation is usually formal, and there is not regular married life until the girl attains the age of 16 or more.

10. The reply to this question is dependent on the education of the girl, her environments, and her opportunities of gaining experience. "The intelligent consent to cohabitation with a due realization of the consequences" does not depend upon age.

11. No.

12. No. There are other vital factors requiring serious consideration.

13. No.

14. Women proceed in their usual routine, and do not specially favour consummation at an early age.

15. The difficulties contemplated by this question do exist, but have no reference to Age of Consent. To obviate the difficulty to a certain extent, the law of registration of births should be enforced more rigorously.

16. *Vide* reply to question No. 15

17. There should be separation of sections and offences in marital cases should be punishable with fine only, which may extend to one hundred rupees. Substantive punishment to the husband is a punishment to the wife also, and the law which looks to protect girls will have the effect of ruining them.

18. In marital cases, no courts should be empowered to take cognizance of this offence unless a complaint is filed by either of the parents of the girl.

19. For safeguards for improper prosecution and extortion, we have suggested the remedy in our reply to question No. 18.

20. We strongly deprecate any legislation in such matters.

21. We rely upon the progress of social reform by means of education and social propaganda. We consider legislation in this matter as highly prejudicial to the interests of society.

**Written Statement, dated the 5th September 1928, of Mr. F. G. H. ANDERSON, I.C.S., M.L.C., Commissioner, Poona.**

In reply to your No. 42 A. C. C., dated 31st July 1928, upon the Age of Consent Bill I have the honor of intimating as briefly as I can my views. I may say that except as a Magistrate and District Magistrate (and that not recently) I have very little real knowledge about this matter except what I gather from the Press and from observations in private capacity, nor do I feel qualified to make myself a mouth-piece for Indian opinion on any point of view. My observations are simply those of a spectator interested in the moral progress of the country.

(2) To my mind what is chiefly required throughout India is the recognition of the fact that rape is no less a crime when committed under cover





frequently other deserted wives or deserted husbands somewhere else. I know of several cases of this sort. There being no registration of marriages, it is very difficult in courts to prove marriages. I have known cases in which it was simply impossible to prove or disprove; that is to say, there can be no satisfactory regulation of divorcees, or the rights of the wives to maintenance, or anything else until the fact of marriage is much more easily provable than it now is. Then again as to the birth certificates. Nothing is commoner than for these to be forged or fraudulently altered, more particularly by the insertion of false names. There is one very simple remedy, and so far as I can see one only, that is, it should be made the law for all India that in the case of every child born whose birth is registered (and registration should be made compulsory) the impressions of both thumbs should be obtained at the earliest age at which expert advice can assure us that the ridges and impressions are sufficiently fixed for future identification. I have not gone into the matter, though I fancy that impressions taken a few days after birth are good enough. At any rate I believe the configurations of the lines of the thumb impressions are quite fixed by the age of six months. It will be very difficult indeed to administer any law depending upon the age of female children unless the registration of births and its corroboration by thumb impressions is tightened up.

(6) *Your Question 17*: From what I have said you will gather that my answer is that certainly there should be no distinction and the punishment should be the same in both cases.

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**Written Statement, dated the 11th August 1928, of Mr. B. S. MUZUMDAR, President, D.L.B., and Mr. V. P. PRABHU, B.A., Member, D.L.B., Ankola.**

1. Though the illiterate section of the people is largely indifferent towards these matters the educated people are dissatisfied with the law as it stands (sections 375 and 376, Indian Penal Code).

2. In our opinion there are circumstances which justify making an advance in the present law for more reasons than one, the main reason being that under the existing Age of Consent the young wives do not possess sufficient physical maturity and strength to bear burdens of maternity and motherhood.

3. Fortunately crimes of seduction and rape are not frequent in our part of the country.

4. The amendment referred to in the question has gone some way to produce results mentioned in (1), (2) and (3).

5. The usual age of puberty on this side is about 13 and it may be slightly higher amongst healthy rural classes.

6. Cohabitation before puberty is not common here. Generally it is soon after puberty and therefore rarely before the girl completes 13 years. Hence there are probably no cases before the courts.

7. The practice of early consummation after puberty wherever it exists is in our opinion largely due to the religious injunction. The authority with nature can be found out on a reference to the texts in compilations like Nirnaya Sindhu. The injunction is only recommendatory, the penalty for its breach being a mild religious disability of the girl, who is forbidden to participate in offerings of sacred food or drinks and in assisting such preparations as also in performing certain religious observances and fast, before the Garbhadhan ceremony is gone through.

8. Yes, Garbhadhan is performed generally soon after puberty and it coincides with the consummation of marriage. The earliest time of its performance is generally the 5th day after the attainment of puberty.

9. The answer to this question is in the negative. We think at the age of 16 and about 3 years after puberty the girl may be considered to be suffi-

iently developed physically and mentally for a healthy consummation of marriage.

10. For an intelligent consent, a girl must be not less than 16.

11. Medical science has proved beyond doubt that the results of cohabitation before full physical development of a girl are positively harmful, if not disastrous. Our experience is the same.

12. Our answer is emphatically in the affirmative.

13. Public opinion is slowly but surely advancing towards this reform in marital cases. We cannot say so in extra-marital cases. It is confined to the advanced classes and may take much time to be general.

14. Generally speaking women in our parts are more uneducated than educated and hence favour early consummation, but that only after puberty. The trend, however, is distinctly towards putting off Garbhadhan which always coincides with consummation.

15. We have no experience of the difficulties mentioned in this question. But to minimise these difficulties legislature may define measures penalizing parents that fail to get births of children registered by Local Bodies in their area.

16. The difficulty and the error would surely be minimized if the age is raised to 14 years or above.

17. The principle of differentiation as it obtains in the existing law appears to us to be sufficient for our present needs.

18. The present procedure of trials for both kinds of offences does not in our opinion call for an immediate actuation or amendment.

19. No additional safeguards appear to be necessary.

20. In our part of the country which is largely backward and orthodox, public opinion will prefer penal legislation fixing a higher Age of Consent for marital cases to the alternative of fixing the minimum age of marriage.

21. In the interest of the nation, society cannot wait for the results of the low progress of social reform and spread of education. We, therefore, prefer to rely on the strengthening of the law to secure the object.

**Written Statement, dated the 1st November 1928, of Mr. R. G. DANDAYATE, B.A., LL.B., Pleader, Poona City.**

1. There is dissatisfaction with the present law as to the Age of Consent as contained in sections 375 and 376, Indian Penal Code. The ages mentioned in both the sections ought to be higher than those prescribed by law for the present.

2. A time has come when we ought to make an advance in the present law. Marriage according to Hindu law is not a matter of contract, but is regarded as having some religious sanctity. It would have been unwise on the part of Government at the beginning of this rule to interfere in such matters. Government would have been charged with meddling with the religious beliefs of the people and which would have been in direct contravention of the Proclamation of the Queen. In fixing the Age of Consent as 12, there was nothing repugnant or abnormal. The girls in India generally attain puberty at the age of 13 or 14. The consummation of marriage in almost all the cases takes place soon after the puberty. Puberty at the age of 12 or below that must be taken to be an exception. The fixing of the Age of Consent at the age of 12 did not in fact offend against the religious notions of anybody. But every one knew that there was such a law.

But by experience, we have been able to observe that the consummation of marriage even at the age of 13 or 14 has resulted and results in the

gradual degeneration of the past and present generations, and will also degenerate the future ones. People have realised this. Education has to a great extent contributed to the realisation of the evil effects of early marriages. The girls among the literate class are now-a-days generally married not below the age of 13 or 14, with the result that the consummation of marriage takes place immediately after puberty. Law is intended to prevent a mischief and to allow to retain a law fixing the Age of Consent as 12 or 13 is to keep a medicine ready for a disease which never exists.

Under the present circumstances and looking to the health of the present girls, it is highly necessary to make an advance on the present law. The orthodox opinion is fast disappearing and a legislation of this type would meet with the general approval.

3. The crimes of seduction and rape are frequent in the Poona District. There is no change since the passing of law of 1925. There are very few cases of girls under 14 years being seduced or raped. Sections 363, 365 or 366 of the Indian Penal Code are sufficient safeguards for seduction of minors.

4. The amendment of 1925 has not been effective only in the case of backward classes. In order to make it effective circulars may be issued to the village officers by the District Magistrate off and on, giving publicity to the present law and the punishment that would be meted out in case of disobedience.

5. The girls attain puberty at the age of 14 generally. The age does not differ in different castes or communities. The age of puberty depends on the environments in which the girls are brought up. Also it depends upon the health of the girls and the climatic conditions.

6. In this part of the country cohabitation takes place soon after the attainment of puberty, irrespective of the age of the girl. No such cases ever come to court unless they are cases of rape on girls of tender age.

7. Early consummation of marriage cannot be attributed to any religious injunction.

8. Amongst the educated classes the "Gaona" or "Garbhadan" ceremony has become obsolete. In cases where it is performed it is generally soon after the puberty and in many cases on the 16th day of the attainment of puberty.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. Completion of the 16th year should be considered to be sufficient to justify such consummation without any injury to the health of the girl or that of her progeny.

10. At the completion of the 16th year a girl in India would be competent to give an intelligent consent to cohabitation with a due realization of the consequences.

11. I have seen many cases wherein cohabitation after puberty, but before full physical development of the girl resulted in injury to her health. The girls generally suffer from T. B.

12. The early consummation and early maternity are partly responsible for the high maternal and infantile mortality. The early consummation of marriages retards the general educational progress of the boys as well as of girls and the offsprings of such parents will not naturally inherit the maximum intellectual development which they would do otherwise. A child born of a girl of tender age becomes a physical wreck after birth inasmuch as the womb of the mother-girl is not sufficiently developed to nourish and to develop an ordinarily healthy and fully developed child.

13. The public opinion amongst the educated class only is favourable to the extension of the Age of Consent in marital and extra-marital cases.

14. The illiterate and the orthodox women in this part favour early consummation of marriage for their children.

15. Great difficulties are experienced in determining the age of girls in connection with offences under section 375 and 376, Indian Penal Code. The medical science is not as yet fully developed to describe the sure tests to find out the accurate age. The X-ray tests do not give the accurate age but an approximate one. The medical evidence is not convincing. The other way of proving the age of the child is by the production of a certified copy from the Municipality or village register. These registers are not properly kept for want of information from the parents. Besides, by law, the information is to be given even before the child is named. In the absence of the name of the child in the birth register, in many cases it becomes equally unreliable. To make these registers reliable, firstly, persons failing to give information should be prosecuted and convicted. All the local bodies and village officers should enforce this penal clause unreservedly. Secondly, the time of giving the information should be within a fortnight from the birth of the child and three days after the naming of the child. Birth dates are required for the school register, so education should be made free and compulsory for girls.

16. The difficulty or margin of error in determining the age will be materially reduced if the Age of Consent is raised to 16 or above.

17. I would separate extra-marital and marital offences into different offences. In the case of extra-marital offences the punishment prescribed in the present law is sufficient. In the case of marital offences, I would suggest a punishment of fine only to the extent of Rs. 500 with a further security with or without sureties for good behaviour for a period to coincide with the Age of Consent of the girl in question.

18. In the case of an extra-marital offence, the usual procedure should be followed. But in offences within the marital state, the alleged offenders be tried by the Bench Magistrates or if there be no Bench Magistrates, by a First Class Magistrate sitting with one educated member of the community to which the girl belongs. This offence should be bailable, non-compoundable. The offence should not be tried summarily.

19. The inquiry should be made either by the D. S. P. or by A. S. P. or by Dy. S. P. only.

20. Fixing the minimum age of marriage by legislation would be more in consonance with the public opinion and would be more effective in securing the purpose in view, than by legislating a higher Age of Consent for marital cases.

21. A time has come when I would prefer to rely on strengthening the penal law to secure the object in view. The nation has up till now suffered by this "wait and see" policy and it is now high time when legislation should intervene to put a stop to this national degeneration.

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### Written Statement of Mr. MOHAMED HASHIM MOLEDINA, Poona.

1. Yes.

2. It is necessary to make an advance in the present law by raising the Age of Consent for reason, in my opinion, of improving the physical fitness of the people and to safeguard child-wives against brutal husbands.

3. Yes. Cases of seductions and rapes have in my opinion not been reduced by the amendment of the Law made in 1925, by making the punishment more severe.

4. (i) The amendment of 1925 has to a certain extent been effective in protecting married girls against cohabitation.

(ii) It has to a certain extent in my opinion stimulated the public mind in the direction of cohabiting, and I think that the spread of education will in the near future stimulate the public opinion more.

(iii) Among the educated classes, but among illiterate and lower classes it has not. To make it more effective I would suggest extensive propaganda, especially in the villages.

5. Thirteen or fourteen. A great deal depends on the comforts, etc., of the girl.

6. (1) No.

(2) Yes.

7. With Muslims consummation of marriage occurs at or after puberty.

9. No. Three years after attaining puberty. I think consummation of marriage should take place three years after puberty.

10. Twenty.

12. I consider that early consummation and early maternity are chiefly responsible for high maternal and infantile mortality and for the intellectual and physical deterioration of the people.

13. The educated classes only favour the extension of the Age of Consent in marital and extra-marital cases.

14. The lower and illiterate classes favour early consummation of marriage.

15. To remove or minimise difficulties in the determination of the age of girls in connection with the offences under sections 375 and 376, Indian Penal Code, I would suggest the proper registration of births and marriages, which should be left in the hands of the Government Officials.

16. Yes.

17. Yes, I would have maximum punishment fixed at one and five years respectively.

18. Yes, but I think marital cases should be tried *in camera* and be tried by a First Class or Presidency Magistrate or in the Sessions Court. But extra-marital cases should be tried in the Sessions Court alone.

19. I think Social Organisations should be created as auxiliaries to the Police, and with regard to the investigation of marital offences, I think the lowest Police Official deputed for the investigation should be the Sub-Inspector of Police but there should be no torture.

20. Yes. I think that a higher Age of Consent for marital cases should be fixed.

21. I would prefer to rely on the progress of Social Reform by means of education and social propaganda to secure the object in view.

Written Statement, dated the 24th November 1928, of Mr. C. V. VAIDYA, M.A., LL.B., Poona City.

I am in receipt of your letter, dated 5th November 1928 (Camp Poona), and proceed to reply to your questionnaire not *seriatim*, but generally. The delay in reply is due to the fact that I have had to reprint my pamphlet in my अवलोकन तिसपति on "Child Marriage is not sanctioned by Hindu Dharmasastra", as no copy was available for sending, the pamphlet being published nearly 35 years ago. I have reprinted it both for your Committee and for replying to the strange decision arrived at recently at Benares, by the अखिल भारतीय ब्राह्मण सम्मेलन presided by several Śankarāchāryas. My view is that Hindu Dharmaśāstra from Śruti (श्रुति) down to the old commentators on Smritis lays down the following dicta:—

(1) Marriage before sixth year of the girl is invalid and before the eighth is improper.

- (2) The eighth year is the lowest recommendable age, but the most recommendable age for marriage of girls is just before puberty. The usual age for such puberty is taken to be 12 (complete) and hence it is said by Parāśara "Whoever does not marry his daughter when she is 12 years of age incurs sin." 12, however, here is only indicative of puberty.
- (3) The father or guardian of a girl has to dispose of her within three years after puberty. If he fails to do so, the girl has the right to dispose of herself by marrying a suitable person.
- (4) If a father does not exercise this right in due time and if the girl also does not exercise her right at once or in reasonable time, both incur sin. The girl becomes **वृषली** (शूद्रा) ; but this condition does not entail **पतित्य** or loss of caste.
- (5) The marriage of a woman at any age is valid and legal and entails no disability on the children in any way.

As against this the above-mentioned Sabha has decided that the best age for marriage is eight and an unmarried girl on attaining puberty immediately becomes a **वृषली** which condition is equal to **पतित्य**। These conclusions are entirely against Hindu Dharmasastra as shown in detail in my pamphlet sent herewith.

In consideration of the dicta above mentioned of Hindu Dharmasastras interpreted by me, I am against the raising of the Age of Consent beyond 13, as against the husband. Against strangers it may be raised to 16. For the girl has to wait for three years after puberty before she marries of her own right and this age usually means 16 years (complete). In my opinion section 376A, Indian Penal Code, is absurd and not workable. It must be noted that according to Hindu Dharmasastra, cohabitation with a matured wife is obligatory, and abstaining is as sinful as cohabitation with an unmatured wife is sinful.

I may finally state that in my view postponing the marriage of girls beyond 16 and of boys beyond 21 is inadvisable, as when practised, as it is at present among the higher educated classes, it has led to evil habits among unmarried boys and to emaciation and loss of mother's milk among girls married late. I may state that so far as I have marked, most late married mothers are without milk and children have to be fed on cow's milk or milk prepared. This is a view which perhaps may be considered startling; but inordinately late marriages are leading to the physical weakness of the coming generation. In short inordinately late marriages are as bad as inordinately early marriages, both from Dharmasastra and social science as well as physical consideration.

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**Written Statement, dated the 15th August 1928, of Mr. M. G. GOPI, President, District Local Board, Kanara.**

1. So far as this part of the Presidency is concerned, there seems to be no dissatisfaction with the existing state of the law.

2. A law should be changed if it is ineffective in serving its purpose. So far as I can see, the Age of Consent law, as it is at present, cannot be said to have failed of its purpose and it cannot also be said that it has proved harmful. Since marriage with girls under 13 is lawful, cohabitation with them must be lawful too. Marriage without cohabitation does not look reasonable in the eyes of an average man. In other words to permit marriage to be celebrated with girls under 13 and to punish cohabitation

with them is like laying a trap. So for such other reasons making an advance on the present law is not desirable, unless the result of Mr. Sarda's Bill is finally known, which can be said be a kind of direct measure for protecting all kinds of girls—married or unmarried.

3. The offence of rape is very rare in this part. Very few offenders, who commit rape, take the trouble of ascertaining beforehand the limit of age prescribed by the Penal Code. Still it can be said that the amendment must have served its purpose in such parts of the Presidency where rape is very common.

4. Most probably the majority of parents and husbands have not heard of the amendment of 1925. They are illiterate and unless some one in the neighbourhood is prosecuted for the offence, they have no means of knowing the law passed at Delhi in the Assembly. So the law in the vast majority of cases is a dead letter. So I do not think that the amendment for its own sake has in any way helped postponement of marriage or stimulated the public opinion, though there are various other adverse circumstances that come in the way of putting off marriage beyond 13.

5. The usual average age of attaining puberty is 13. The climatic conditions are the main cause of attaining puberty at that age; hence this principle is the same in all classes of communities. I think that communal principle should have no room in the law relating to "rape".

6. Soon after puberty cohabitation is common in this part of the country.

7. The practice of the early consummation of marriage among higher classes of Hindus is mainly attributed to religious injunctions though there is no such strict injunction among communities of lower classes. Invariably it is presumed that marriage is performed before a girl is matured. The authority in this connection is amply to be found in Brahmhidan (ब्रह्महिदान) Smratishara Samuchaya (स्मृतिशार समुच्चय) Manu Smriti (मनुस्मृति) (पराशर स्मृति) Parasara Smriti, etc. As these books are not available here for the present, I cannot point out the passages from them that are applicable to the points raised in the question.

8. Garbhadan ceremony is invariably performed after puberty. This ceremony is done after the consummation of marriage, soon after the attainment of puberty. Putting off this ceremony is not now-a-days uncommon, as cohabitation with girls under 13 does great harm to the moral and intellectual growth of the pair, though medical point of view of the question is ignored.

9. The attainment of puberty is not a sufficient indication of physical maturity. A girl may be considered to be physically developed at the age of 14, which may be considered to be the reasonable age limit to justify the time of the Garbhadan ceremony without injury to her own health and that of her progeny.

10. At the age of 16 a girl in India will be competent to give a consent for cohabitation with strangers with a full realisation of future consequences.

11. Nil.

12. It is not the early marriage but the Garbhadan ceremony very soon after maturity is the main cause of maternal and infantile mortality, vitally affecting the intellectual and physical progress of the people in general.

13. No.

14. Yes.

15. No. If the Birth and Death Register is properly and strictly maintained by the Revenue officials concerned, the difficulty will be greatly solved.

17—18. Yes. Extra-marital and marital offences cannot be treated as of the same nature. The different age limits fixed for the sexual connection by a husband or by a stranger, go to show that the offences are not of the same type.



The maximum punishment for the offence by a stranger should be imprisonment of either description for two years or with fine or both, while that for the offence by a husband should be imprisonment of either description for one year or with a fine or both.

Transportation for life or imprisonment for 10 years is too high a punishment for the offence of sexual intercourse by a man with his own wife being under 12 or 13 years of age. The real object of turning out better men will never be served by this type of punishment.

20. So far as I think the section on rape is to be confined only to the offence of strangers. Rape in marriage is not desirable; they are contradictory in terms. Child marriage should be prevented by such means that may not come in the way of religion. Raising the Age of Consent, so far as the married girls are concerned, is a very clumsy way of reforming child marriages. The law of the Age of Consent has got its own defect and danger.

21. The progress of social reform is absolutely necessary. To gain this object it is not desirable to seek the help of penal law, in view of the fact that India is a country of people of different castes, creeds and communities. The best way of obtaining the object is by means of education and social propaganda.

The main thing with which we are concerned in this is to do away with the abuses of child marriage. Change alone is constant in this world. The Hindu Shastras are not so conservative, as they are represented to be. There are provisions for changing them from time to time to the needs of the day; but the only thing is that the power of changing them is left entirely to the decision of a Mahasabha of all the Pandits put together well versed in all Shastras. For want of such a constitutional system the Hindus are lagging far behind in point of social reform.

**Written Statement, dated the 12th August 1928, of Mr. M. T. SHETTY, B.A., LL.B., Member, District Local Board, Karwar.**

1. So far as I know there has been no dissatisfaction regarding the provision in sections 375 and 376, Indian Penal Code. The provisions are very salutary. But only the difficulty is about enforcing the provisions. Once a girl below 13 is married, it is impossible to bring to light any offences which may be committed under the sections. As far as the ease of unmarried women, e.g., a prostitute, is concerned, it is impossible to say that there have not been offences under the sections. But it has become impossible to expose such offences. If there is any disaffection, it is because the law has remained a dead letter.

It is my firm opinion that the amendment of law on Age of Consent cannot achieve the object in view until the marriage of a girl below a certain age, say 13 or 14 years, is penalised. If you once allow a girl to be married below 12 or 13 years, it is very difficult to compel her husband to defer cohabitation with her until a particular age. There are instances where girls have matured at the ages of 12, 13 or 14 years. It is also common knowledge that consummation of marriage takes place immediately after girls attain puberty. It is therefore absolutely necessary that the law regarding the Age of Consent should follow the law restraining child marriages. A Bill of the kind is on the anvil of the Legislative Assembly. If the Sarda Bill as amended by the select committee becomes law and a marriage of a girl below 14 years is penalized, there is hardly any necessity of prescribing law regarding the Age of Consent for a married couple. If it is necessary, it can easily be raised to 14, from the present limit of 13 years. This will have to be raised as a matter of course. It is therefore my strong opinion that the present question of raising Age of Consent should be

deferred till after Sardar's Bill is considered and decided by the Legislative Assembly.

2. The law of the Age of Consent as it is can be retained only in case the minimum age of marriage is not restricted to 14 years. An advance on the present limit of 13 and 14 years can be allowed only in case marriages below the age of 14 years are penalized.

3. I cannot say that the crimes of rape in this district are rare, but the detection of such crimes has become rare. Cases of seduction are rare. I am not sure there are any cases of rape outside marital state. No doubt the law as such must have served as a cheque on the otherwise wild instinct of cohabitation with a prostitute before she attains 14 years of age.

4. The amended law by which the Age of Consent within the marital state has not achieved the object referred to in this question. The consummation of marriage has been postponed only in some cases among advanced communities. This is the result of quite other circumstances, such as dowry system, etc. No public opinion for postponing consummation of marriage can be said to be much stimulated by the passing of the law. I am positive, people have not put off marriage as a result of the amended law raising the Age of Consent to 13 years.

5. The usual age at which girls attain puberty is 12 or 13 years. The age of puberty goes down specially in such classes where girls are expected to do manual labour and where they are ill fed.

6. The cases of cohabitation before puberty are very rare. When a girl attains maturity before 13 years, cohabitation takes place before the girl is 13 years of age. Invariably cohabitation takes place soon after puberty. No case has come to court so far as I know.

7. I do not think that Hindu scripture enjoins consummation of marriage before or at puberty. Pre-puberty marriage only is recommended by Shastras.

8. Garbhadhan ceremony takes place after and not before puberty. In 90 cases out of 100, so far as I know, the ceremony is performed within a month or so after a girl attains puberty.

9. I am of opinion that attainment of puberty is not at all an indication of physical maturity and it cannot justify consummation of marriage. In my opinion 16 years can be considered as the proper age after which a girl can be said to be fit enough to justify consummation without injury to her own health and that of her progeny.

10. 16 years is, in my opinion, the proper age at which a girl in India would be competent to give an intelligent consent to cohabitation with a due realization of consequences.

11. There are instances in which cohabitation immediately after puberty but before full physical development of a girl has resulted in injury to her health and in some cases it has prejudicially affected her progeny. This has taken place in a case where the age of the girl was 13 years and the result of cohabitation was her growth was stunted day by day.

12. Early consummation is largely responsible for *infantile* rather than *maternal mortality*. It is chiefly responsible for the deterioration in the intellectual and physical progress of the people.

13. Public opinion has developed in favour of an extension of the Age of Consent chiefly in marital cases recently and not necessarily since amendment of 1925. If the opinion has developed, it is because of the increasing injury to the physical and intellectual growth of girls.

14. Women in our parts, especially in backward communities, favour early consummation of marriages of their children. It is on account of blind faith in the out-of-date Shastric rules.

15. The municipalities and the Local Boards or the Revenue Officers should take better measures in seeing that the entries of birth in the Birth Registers

are regularly and promptly made. Special pamphlets should be circulated to the people warning them of consequences against their failure to intimate the birth of a child. At present, the public are indifferent and the authorities are also not very strict in the work.

16. If a proper system of maintaining a correct birth register is maintained, the difficulty of determining any age can be reduced.

17. In my opinion, no difference should be observed in case of non-marital offences. The safety of a married or an unmarried girl would be maintained or jeopardised at the same age. The distinction so long maintained in prescribing different ages and different punishments for the two cases, is, in my opinion, not based on a true principle. If a husband can be safely trusted to have cohabitation with his wife as soon as she is over 13 or 14 years, there is no reason why a stranger should be forbidden to have intercourse with any other unmarried woman, say a prostitute, after the same age of the woman.

18. No difference in the procedure of trial is necessitated in the view taken above.

19. No special safeguards are necessary.

20. I am definitely of opinion that *legislature fixing the minimum age of marriage*, say 14 years for a girl and 18 years for a boy, would be undoubtedly more effective than the penal legislation fixing a higher Age of Consent for marital cases. The orthodox section of the public is somewhat against legislation for fixing of the minimum age of marriage. But the legislation for raising the Age of Consent is only in theory and as it is impracticable to enforce the provision it is better to choose the other alternative of legislation penalising child-marriages. Manu would also recommend post-puberty marriages as second best system, *vide* Verses 89 and 90, Chapter IX of Manu Smriti.

21. I would prefer to rely on the strengthening of the penal law rather than the progress of social reform to secure the object in view. Our people are very conservative. Any amount of spread of education will be inadequate to root out the evil which has taken a deep root.

## NAGPUR.

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**Oral Evidence of the Hon'ble Sir MANEKJI DADABHOY, Member,  
Council of State.**

(*Simla, 15th September 1928.*)

*Chairman:* Are you a member of the Council of State?

*A.* Yes.

*Q.* You are also Governor of the Imperial Bank?

*A.* Yes.

*Q.* Have you got large commercial interests in mining and cotton?

*A.* Yes.

*Q.* In the part of the country where you come from can you say that early marriage exists in a large class of the population?

*A.* I am of opinion that early marriages do exist among the Hindus particularly in the lower classes.

*Q.* Do you think there is some advance among the educated classes about the age of marriage?

*A.* Yes, distinctly.

*Q.* Apart from the educated classes do you think there is a large number of people who have early marriages?

*A.* So far as I understand the position is that in educated households young men who have joined colleges to receive university education or who are in touch with modern society, there is always an inclination not to go in for early marriage but the domestic influences as well as influences of castes and religion and influences of the priest to whom these families are largely amenable prevail in many cases. They are not able to withstand these influences.

*Q.* Leaving aside the educated class do you think early marriage exists?

*A.* Yes.

*Q.* Do you believe that there is consummation soon after puberty?

*A.* Yes. My information leads me to believe that except in high classes consummation takes place almost immediately after gaona.

*Q.* Would you be able to say at about what age girls attain majority in your part of the country?

*A.* It is very difficult to say. My opinion is that in various castes and communities majority is attained at different ages. In well-to-do classes who are well fed and live in good houses and have good and sanitary surroundings, majority is attained at an early age than in the case of ill-fed classes of people. I understand by majority you mean puberty.

*Q.* Do you believe that early marriage and early motherhood are an evil?

*A.* Yes, I do.

*Q.* What will be the age limit you would put for the consummation of marriage?

*A.* I think the age limit which is now fixed is too low; I would extend it to 14 or 15 years in the case of marital relations and to 16 or even to 18 in the case of strangers.

Q. In the existing circumstances are you in favour of legislation to secure the object in view or do you rely entirely on propaganda and social reform work?

A. Partly on social reform and partly on propaganda. If you rely only on education and change of opinion in the country it may take years—it may take a century before reform can be effected. Some temperate legislation would be necessary and that can be attained only within reasonable limits. It should be gradual as people realise its benefits. Any big change would be disastrous.

Q. Is that the reason why you recommend 15?

A. Yes.

Q. Out of the two remedies—one embodied in Sarda's Bill and the other raising the Age of Consent from 13 onwards—which are before the Assembly would you prefer one or the other or would you have both?

A. I am more inclined to go in for the amendment of the Penal Code. Although I heartily appreciate the principle underlying the child marriage bill I am not much in favour of it because in my opinion child marriages do not involve any illegality or criminality or moral turpitude. In the case of consummation just immediately after puberty you may have child marriage at 15 but that does not necessarily follow that consummation takes place.

Q. You mean to say that ceremonial marriage does not affect the issue.

A. No. In my opinion occasionally some necessity may arise for early marriage because if one of the parents is on the death-bed and wants that his child should be married at the age of 15 or 16 I do not see anything wrong in that provided consummation is postponed. So there will be some opposition to Sarda's Bill.

Q. It has been suggested by various people that the Age of Consent at 12 or 13 has been a dead letter and that such cases do not come to light. What is your opinion?

A. I entirely agree with that opinion. Supposing it is raised to 14 or 15 it will not have much effect till the superstition dies out by spread of education among the people on this point. I feel quite certain that in a large number of cases despite the existing provision of Section 375 there is a large measure of consummation at an early age even before 13 particularly among lower classes.

Q. Will the raising of the Age of Consent still keep it a dead letter?

A. Yes.

Q. You mean to say that legislation will not prevent it.

A. No legislation can prevent crime to its fullest degree if the people want to do it.

Q. It is suggested that if there is a bill it will prevent marriages because none will possibly take place.

A. But it will be resented. Besides marriage in a large number of cases intercourse takes place. Girls are sold for the purpose of prostitution at a very tender age when they are still unmarried.

Q. Do you think that raising the marriage age will not be effective?

A. I think the amendment of the penal law will be more effective.

Q. Do you think that mere raising of the Age of Consent without a bill like the Sarda's would be of no use?

A. No.

Q. Would you rather have both?

A. Yes.

Q. Within your personal knowledge have there been any cases in which women on account of early marriage and early consummation have suffered in health?

A. Not lately but I may say that the literature that I have read on the subject leads me to understand that it had, but I have no personal knowledge.

Q. Do you think 15 is a good age for giving intelligent consent to cohabitation?

A. No, I do not think even 15 is a good age. From 13 you cannot go to 16.

Q. At what age will a girl be competent to give an intelligent consent?

A. In my opinion a girl is not sufficiently educated as to understand the nature of her consent and many girls are not in a position to discriminate the nature of the act.

Mr. Kanhaiyalal: I understand that you would prefer to have both marriage legislation and penal legislation fixing the Age of Consent.

A. Marriage legislation will help to make the other legislation more effective.

Q. Independently of marriage legislation can you suggest any means of making the penal legislation on the Age of Consent more effective?

A. Not except education and higher ideal of life and the really higher position of women in society.

Q. Would it be possible to constitute communal or local panchayats in towns and villages to watch or look after cases of premature consummation?

A. I would not agree to the constitution of village panchayats. They would not be effective, as village fraternity is so great that it will not rise above the occasion and actually make a report.

Q. As public opinion advances and strengthens, you might find the village organisations willing to take up that work and do some effective supervision.

A. Not at least for the next 20 years.

Q. Have you further suggested that in non-marital cases the age might be fixed at 18?

A. Yes, go as far as 18.

Q. But as a first stage would you fix it at 18?

A. No, I would fix it at 16.

Q. Would not frequent revisions of the law disturb people's mind and leave the whole situation in a more or less uncertain condition?

A. Ordinarily it has that tendency but in cases of this nature you have got to battle another difficulty namely that immediately raising the age to higher level would cause much disaffection and discontent among the uneducated people.

Q. But frequent revision leads to frequent dislocation and agitation in certain parts of India.

A. Yes. Of the two evils I would prefer frequent revision at long intervals which would enable the country to judge what has been the real effect of such a legislation.

Q. Do you think that in marital cases if the Age of Consent is fixed at 15, there is no reasonable likelihood of material physical injury to the mother or to her progeny?

A. It will certainly minimise it to a considerable extent and enable women both physiologically and organically to perform the marital duties better.

Q. In marital cases would you make the offence cognisable?

A. I am in favour of keeping the existing provision.

Q. To whom would you give the right of complaint?

A. To parents or close male relatives of the girl.

Q. Would you give the same authority to the relations of the husband?

A. I would give the authority, but in very few cases it will be exercised

Q. In order to make the law more effective would you like to give that authority to social organisations or religious organisations like the Arya Samaj or the Hindu Sabha?

A. No, I would not give the authority for two reasons, firstly these social organisations may not be in exact position to ascertain the correct position, and secondly in the social organisations the practice is that they have to depend in the matter of collection of information on low paid men and it might lead to corruption and extortion.

Q. There are organisations which are interested in social progress, and if you exclude them, the information may not otherwise be available. The parents of the girl can be easily won over.

A. I would rather give the power to public prosecutors provided he obtains the District Magistrate's sanction and has got reliable information to institute proceedings.

Q. How will the public prosecutor get his information?

A. He will get it in the same way as social reform societies.

Q. Have they got public workers at their disposal?

A. In a matter of this domestic character I am rather not inclined to give it to outside agency.

Q. Would you give that authority to women organisations such as may exist in the country?

A. My objection to women's organisation is certainly much less than to the other organisations that you have referred to; but I would also keep them out of it altogether, because as we know the Indian life, there may be lot of gossiping going on, and the neighbours, who are not on good terms, may go and obtain the sympathy of women organisations and they would get into trouble. In a matter of this character I think that the law should not be moved except at the instance of a very near party absolutely interested in the welfare of the girl.

Q. Would you make any differentiation between marital and extra-marital cases so far as the designation of the crime and the punishment are concerned?

A. We have already got a higher punishment in the case of strangers.

Q. Would you retain the present punishment then?

A. Yes, I would retain the present punishment, that is 2 years in marital cases or fine, and in the other case transportation for life or 10 years. In the case of strangers who have consummation with a girl who is not married, I consider it a very heinous offence.

Q. Would you separate the designation of the two offences, one being more or less technical, and the other, as you say, heinous?

A. I would not disturb the present legal phraseology because it has continued for many years, and people understand it better. I would not therefore make any alterations.

Q. Has there been any difficulty in proving the age in these cases?

A. Sometimes birth certificates are not obtainable; sometimes they are even destroyed. That is what has come to my notice during the course of my many years' experience as a professional man.

Q. Can you suggest some method of improving this record?

A. I would make it obligatory on the parents to report, and would even impose a small penalty for not reporting at the proper time and having the birth properly registered.

Q. Would you require the registering authority to issue a certificate to the person making the report?

A. Certainly, on the payment of a small fee. I would make it obtainable in every way possible.

*Q.* Is it desirable at the same time to have a compulsory registration of marriages?

*A.* Yes, I would advocate that. It is now kept among the Parsis and the Christians in case of marriages which are performed under the Civil Marriages Act. If it were extended in the case of Hindus and Muhammadans, it would be a distinct gain.

*Q.* By whom is the register maintained?

*A.* By the Registrar of Parsi Marriages. The marriages are registered under the Parsi Marriage Act of 1865 and this Act is applicable to the whole of India. There are sub-registrars appointed under the Act who make a report of the facts regarding the marriage to the District Magistrate. In Bombay there is a special officer called the Registrar of Parsi Marriages.

*Q.* Supposing we make a similar provision authorising the Collector or the Deputy Magistrate or the Tahsildar in rural areas to receive reports of all marriages within their respective jurisdictions and maintain registers, would that serve the purpose?

*A.* Yes.

*Q.* Would it meet with the general acceptance of the people?

*A.* The people will probably not like to be troubled in a matter like this, but it is absolutely essential. It costs so little trouble and a small fee may be levied because you will have to maintain an establishment for the purpose.

*Q.* On whom would you place the obligation of reporting these marriages? Would you place it on the parents, the guardians or the priest?

*A.* Place it on all the three parties, the parents, the guardians and the priests.

*Mr. Kadri:* Do you think that sufficient time has elapsed since the amendment of 1925 was passed to warrant a raising of the Age of Consent?

*A.* Possibly sufficient time has not passed. But, there has been a great change in the ideas of the educated people in the last two or three years. And with the dissemination of women's education it is now felt very extensively that the present limit is exceedingly low.

*Q.* Is the feeling general?

*A.* Yes, more or less general.

*Q.* Are the provisions of the law as it stands at present generally known?

*A.* I would not say altogether that they are generally known. They are known to certain classes of people; they are not known to others. There are many laws which are not known to the proletariat. For instance, how many people know the existing of laws on succession or inheritance amongst Hindus or the Wakf Act among the Muhammadans?

*Q.* Would you raise the Age of Consent in marital cases to 15?

*A.* Yes.

*Q.* Some people say that if we penalise the husband it would be a great hardship on the girl herself, and we ought to make an exception in the case of boys between 18 and 21, etc. What is your opinion?

*A.* This is the stock argument of some people who say that it is a great hardship caused on the woman if the husband is prosecuted. I do not believe it. If such cases are prosecuted, there will always be reduction in the crime, and it will have a very wholesome influence. Even if there is real hardship in one or two cases, for the purpose of general reform I would be prepared to go to that extent.

*Mr. Mudaliyar:* You said that it is not desirable to authorise Social Reform bodies to take up the prosecution in such cases, but that you would allow the Public Prosecutor, with the previous sanction of the District Magistrate to initiate the proceedings. If social reform bodies are more anxious to bring the offence to light, would you have any objection to their going to the Public Prosecutor and placing their information before him?



A. None.

Q. You said the same thing about the Women's Associations. Can they approach the Public Prosecutor in the same circumstances?

A. Yes. In these cases there is a guarantee of the District Magistrate making an enquiry into the cases before launching a prosecution. There are cases in the Indian Penal Code where such previous sanction is obtained. Supposing the uncle of the girl knows that an offence has been committed and he is anxious to report. In the circumstances he may go to the Public Prosecutor and give information and the District Magistrate will then make enquiries. I am generally against providing for the interference of Public Prosecutors in social and domestic matters like this. But there may be cases in which it may have to be done. Therefore I necessarily urge to take the precaution that the offence should first be brought to the notice of the District Magistrate and his sanction obtained in writing.

Q. Have you any objection to these cases being tried in camera?

A. None. These would be fit cases for being tried in camera.

Q. You said that you fix the Age of Consent in marital cases at 15. Do you think that there would be much difference in the amount of antagonism in the orthodox classes between the ages of 15 and 16?

A. I think the extent of antagonism would be the same whether the age is 15 or 16. But I want to proceed on the lines of least resistance and fix 15 for the present. Of course the priestly classes will agitate whether the age is 15 or 16.

Q. Do you think that there is any possibility at any time of fixing the Age of Consent in marital cases very much more than 16?

A. I do not think that you can extend the age in marital cases to more than 16. It is the maximum. In England I think the age is 16.

Q. The minimum age is 12 in England. With reference to the marriage legislation, would you have exemptions provided for such as you have referred to?

A. I have seen the report of the Select Committee on Sarda's Bill. But there have been no exemptions of that character in that Bill as the Select Committee has passed it. Moreover, you know the difficulty of providing exemptions. Your list cannot be exhaustive to cover all the emergencies that may arise.

Q. Even if exemptions are provided for in marriage legislation, do you think that the legislation would not be effective enough?

A. It cannot be in the Hindu society as it is at present constituted. Personally I do not think that Sarda's Bill will be accepted extensively in the country. The Muhammadans also will not agree to it, because it will be said that we are interfering with the personal law laid down in the Quran.

Q. With reference to the registration of marriages, do you think there will be opposition to it from orthodox society on the ground that this is a first step for the introduction of Civil Marriages?

A. Even if there is opposition, it would not carry much weight. It would be very sound to have registration of marriages in India. There should be legislation.

Q. What is the purpose which this registration is intended to serve?

A. The idea is to prove the fact of marriage in case of dissolution, adultery or bigamy in the case of Western marriages. It is a clear and unequivocal evidence of the marriage and therefore a safer system.

Q. But do you know of any cases where it has been found difficult to prove the fact of a Hindu Marriage?

A. In course of my practice I had this difficulty at times. In cases of bigamy the accused always pleaded that there was no marriage with the

first woman. On the other side witnesses were produced who were supposed to have been present on the wedding occasion. There was perjury on both sides.

Q. Do you think that registration will help us with reference to the 'Age of Consent'? In cases of dispute can we say that at the time of marriage the parents of the girls have set down the age of the girl as such and such, etc.?

A. Yes. In the register there are columns for entering the guardian's name, the age of the girl and the boy, the date on which the marriage was performed according to the Hindu calendar or the English calendar, etc. There is also a remark column in which anything may be put in. There is therefore reliable proof in the case of prosecutions.

Q. Is that in the Parsi Marriage Act of 1865?

A. Yes, there is a schedule which gives these particulars and you may safely adopt it in case registration of marriages happens to be one of your recommendations. It does not differ very much from the English Marriage Act.

Q. Is there any penalty imposed for false declarations?

A. Yes, there is. It comes under the ordinary provisions of the Indian Penal Code. The false declaration comes under the provisions of the Indian Penal Code and the facts to be proved come under the Evidence Act.

**Written Statement, dated the 13th August 1928, of Rai Bahadur PRABHAT CHANDRA BOSE, B.A., LL.B., M.L.C., Jubbulpore.**

*(Answers to Questionnaire.)*

1. There is dissatisfaction amongst the educated community.

2. (2) It will lead to moral advancement and physical well-being. It will also tend to give a chance to the girls to learn the responsibilities of motherhood.

3. Cases of rape and seduction are frequent in this country. The amendment of 1925, raising the age to 14 may not have had the effect of reducing the number of such cases, but this is probably due to ignorance of the law amongst the uneducated masses. In my opinion, this law would be more effective, if the age of marriage is also raised by enactment and system of registration of all marriages is introduced. In registering births, the ages of mothers should also be investigated by the police or Registration authorities.

4. (1), (2) and (3) I have already stated that the raising of the Age of Consent, in itself, cannot be very effective, unless it is supplemented by other methods making sexual intercourse below a certain age penal, under all circumstances. Educated public opinion is no doubt aroused against early marriage and the girls are married now at a higher age than before.

5. The usual age is about 12 amongst Indians, in these parts.

6. (1) Generally, no.

(2) and (3) Yes.

Very few cases, if any, come to court.

7. The practice of early marriage is due to the Smriti Laws, and social customs. The Smriti laws enjoin that if a girl remains unmarried after puberty, he and his ancestors will be cast in hell. There is also fear of social ostracism.

But the latter is slowly wearing off.

8. 'Gaona' is performed usually one year after marriage but not necessarily after the attainment of puberty.

9. Girls should not be allowed to be mothers before attaining 16 years of age, even if she is a healthy girl. In my opinion, this is the very minimum

age. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation. In 80 per cent. cases physical maturity is not attained with puberty.

10. The minimum age is 16 years.

11. I know of one case in which a married girl became a mother at 14. The result was the child was a weakling, and died in 10 months. She successively had four sons but all weak and generally had brain trouble and died. Latterly, she had 7 more children who are all alive and healthy. The general decline in health of young girls and the high infantile mortality combined with the number of diseased and weak children in schools, clearly indicate that this is at least partly attributable to early motherhood. Medical opinion is definite on this point.

12. Yes, medical opinion supports this. Besides I have personal experience of the case cited in para. 11.

13. Public opinion is in favour of the raising of the Age of Consent as well as the age of marriage, but the application of the Acts must be effective. This is confined to the educated classes generally. There has been not much effect on the uneducated classes.

14. Not all, the educated women are against child marriage and many have accepted it as the general custom now-a-days.

15. There is much difficulty as medical opinion of age is not absolutely correct in case of doubt. Besides it is very difficult to differentiate by the present known tests between the age of 12 and 13 of girls, though it would be much easier to distinguish between the ages of 13, 14 on one hand and 16 on the other.

16. Certainly if the age is raised above 14 it would be easier to eliminate the margin of error.

17. They should be treated as separate offences and the punishments should remain as at present.

18. In both cases, trials should be by jury, as a Sessions case.

19. Registration of marriages with proof of age will be a safeguard, as suggested above. The offences should be penal, even if collusion is proved and the party trying to conceal the offence should also be made liable to punishment.

20. In my opinion, both are necessary. But the penal legislation fixing the higher Age of Consent for marital cases should certainly be more effective. Both the raising of the minimum age of marriage as well as the raising of the Age of Consent would be in consonance with the public opinion of this part of the country.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view.

Social reform by means of education and social propaganda are sure to help but it would be only a dilatory method.

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**Oral Evidence of R. B. PRABHAT CHANDRA BOSE, B.A., LL.B.,  
M.L.C., Jubbulpore.**

*(Nagpur 24th January 1929.)*

*(Rai Bahadur Pandit Kanhaiya Lal presided.)*

*Mr. Kanhaiya Lal:* Are you the President of the Municipal Committee, Jubbulpore?

*A.* Yes.

*Q.* How long have you been so working?

*A.* One full term of 3½ years and I have been re-elected.

Q. Are you a member of the bar?

A. Yes.

Q. How long have you been practising?

A. For 29 years.

Q. Have you been connected with any social reform or other public movement in your part of the country?

A. I have been connected with many. I am the President of the Jubbulpore Club. I, in fact, laid the foundation of the Club and I was the Secretary for 15 years and am now the President. I am also the President of the Boy Scouts Association, Jubbulpore. I was for sometime the President of the Hitkarni Sabha High School. I am the Vice-President of the Bengali Girls' School. In fact, this school has been started by me. I have been taking part generally in almost all public movements.

Q. Are you also a member of the Local Legislative Council?

A. I have been for the last 6 years.

Q. Can you tell us in what communities early marriage is practised?

A. Among the poor classes generally it is practised.

Q. What is the usual age of marriage among them?

A. They marry girls from 8 to 12. No girl is left unmarried at 12.

Q. What is the practice about consummation of marriage?

A. Immediately after attainment of puberty consummation takes place.

Q. Is Goana ceremony prevalent?

A. It takes one to three years in case of girls who are married below 12. At about 12 generally Goana ceremony is performed.

Q. What about the higher classes?

A. They generally marry after 12.

Q. And when does consummation take place?

A. Just after the attainment of puberty generally.

Q. Is Goana observed among them also?

A. Not in all classes. In some it is observed and in others it is not.

Q. Have you got much Marwari population in your part of the country?

A. There is Marwari population.

Q. What is the practice as regards marriage among them?

A. They also generally marry below 12.

Q. What is the practice among Marhattas?

A. They generally marry after 12.

Q. Among Brahmins?

A. We have Desi Brahmins, and Bengali Brahmins.

Q. At what age do Bengali Brahmins marry?

A. They marry generally after 12 and now they have raised their age to over 14.

Q. What are these Desi Brahmins?

A. Brahmins coming from U. P. There is a large population of them.

Q. At what age do Desi Brahmins marry?

A. They marry generally about 12.

Q. At what age do the Kayasthas marry?

A. They marry at a more advanced age, 14 or 15.

Q. And the Vaishyas?

A. They marry before 12. The Vaishyas are largely of Parwar community in Jubbulpore. They come mostly from Bundelkhand. They are in fact Jains and they were originally Kshatriyas. They became Jains many hun-

dreds of years before. They are generally traders. Then there are the Marwari Banias who also marry before 12.

Q. In these higher classes, may I understand that they consummate marriage after puberty?

A. Yes.

Q. How long after puberty?

A. Soon after puberty.

Q. Have you noted any evil results on account of early consummation?

A. The mother loses her health and the children that are born are very weak. Generally they die as infants and if some of them survive they are weak and they are subjected to various diseases. The children are not healthy.

Q. Have you noticed mothers losing their health and getting various ailments due to maternity?

A. Yes.

Q. Can you tell me what remedy do you propose for remedying these evils?

A. To raise the age of marriage.

Q. And what is the age that you propose?

A. 16.

Q. Do you think it will be acceptable to the orthodox classes?

A. Some orthodox people would of course not like to raise the age. If it is made into law I think they will come round and that would ameliorate the condition of the girls and of their children.

Q. Will the lower classes in rural areas accept this age?

A. If the law is passed they are bound to accept it. There is no go out of it.

Q. We have gone to several villages and the people there tell us that they cannot keep their girls long unmarried, that there is a danger of their going wrong and that under those circumstances they would have to give caste dinners which they could not afford.

A. I think it is more a fear than a real fact.

Q. Do you think that by postponing the marriage till 16 either in cities or rural areas there is no chance of the girls going wrong?

A. No. In the rural areas there is very little chance. In the villages there are very few houses and the people there are very particular regarding immorality. If a single girl, whatever her caste or whoever she may be, goes wrong the whole village knows of it at once.

Q. What they say is that girls in towns mostly live in houses and are receiving education and in the villages they go out to work in the fields and to attend to the calls of nature and the danger is greater there.

A. There is lesser danger in villages than in towns.

Q. Why?

A. Population is small and everybody keeps a watch. Whenever the girls go out they go out in batches and even when they go out for calls of nature they go out in batches.

Q. They also say that the father and the mother may be old and there may be nobody to look after the girl after their death and they want their girls to be settled in life early during their life-time.

A. This is more an idea than fear. In this way they, in fact, do not provide for the girl but they injure the girl and her whole life is gone.

Q. Would you make a provision for exemption in suitable cases?

A. I am for no exemption at all. Once you exempt the evils will continue.

Q. But the District Judge may refuse the application for exemption. He may consider whether it is in the interest of the girl to grant an exemption.

A. I am not in favour of it. It is not likely to cause any good.

Q. If 16 is fixed for marriage what age would you fix for consummation?

A. Same age.

Q. Suppose the Legislature is able to pass the law fixing the age at 14 only in that case what age would you recommend for consummation?

A. 16.

Q. And if the Legislature is unable to pass a law fixing the age of marriage even then will you adhere to 16?

A. Yes.

Q. Up to 12 cases under the present law are cognizable and beyond 12 they are non-cognizable. Would you keep the law as it is or make any alteration?

A. It should be cognizable up to 16. The trial should however be a Sessions trial by jury.

Q. You are aware that under the present law the punishment for marital cases below 12 is 10 years or transportation for life, so that those cases go to the Sessions. But between 12 and 13 the punishment is only 2 years and therefore they are not triable by the Court of Sessions.

A. This offence should be made specially triable by the Court of Sessions although the punishment may be only 2 years.

Q. Instead of this would you advocate a matrimonial court consisting of a magistrate and two non-officials who should co-operate with him as co-judges so that the trial may proceed at once and be finished without any trouble to the parties?

A. What I mean is this. If a case goes to a court the after effects would be very bad. If there is a jury trial there will be at least half a dozen persons of the community who will know the real facts and it will impress the minds of the community and check any further cases. Some people will begin to know it and the fact of the law would be brought home to them very soon and they will also be able to judge regarding the heinousness of the offence that has been done. One judge conversant with law is enough.

Q. If these two non-officials are there they can also take part in assessing the sentence and adjusting it to the requirements of the case.

A. It is not necessary to supplement a judge. As a rule the judges we have got are good judges.

Q. Don't you think your proposal will mean the prolongation of the trial?

A. There will be a little prolongation. We want to give more publicity to an offence of this nature to bring home to the minds of the people the seriousness of the offence. I would like them to be prolonged.

Q. Would you require that all these marital cases should be enquired into by the higher officers of the police like the Deputy Superintendent or the Circle Inspector?

A. Yes, they should be enquired into by higher officers.

Q. By the Deputy Superintendent only or the Circle Inspector also?

A. By the higher officers.

Q. And none else?

A. No.

Q. Would you further require that these marital cases should be made compoundable in suitable cases in order to restore good relations between the husband and the wife?

A. In suitable cases it may be allowed. For example a girl may be only 2 months less than 16 in which case the offence will only be a technical offence

and there may be no injury to the health of the girl. In such cases it may be allowed to be compounded so that the relations between the husband and the wife may not be strained.

*Q.* Would you further agree that in marital cases up to a certain age if circumstances have brought the boy into contact with his wife without any fault of his own he should be exempted from punishment? Some have suggested this age to be 14, some have suggested 15 and some have suggested 18.

*A.* The boy should not be married below 18.

*Q.* Suppose a boy marries a girl under 16 in contravention of the law?

*A.* He should be punished.

*Q.* But the fault will be mostly of the girl's parents or boy's parents.

*A.* The boy may not be given very severe punishment. The parents who have brought them together should be punished.

*Q.* It has been suggested that we should have a system of registration of marriages, i.e., records of all marriages being kept with the names and ages of the marrying parties. Would you recommend it?

*A.* I have recommended it. Not only that, when the child's birth is registered the age of the mother should also be recorded so that we might be able to know at what age is the child born.

*Mrs. Nehru:* What guarantee is there that the age would be correctly given?

*A.* That we could compare from the register of births.

*Chairman:* We will have to find out her birth place first before we can make the enquiry?

*A.* We could do that.

*Q.* What about the identity of the child? Have you got a column for name in the register?

*A.* Yes.

*Q.* Is the name entered?

*A.* At the time of registration no name is given and therefore the name is not entered.

*Q.* How would you remove this difficulty? Would you require a supplementary report when the boy is named?

*A.* Six months should be allowed to give the name. When there are several children born the question of identity crops up and it is very difficult to determine who is the actual child. If the name is given that difficulty will be removed.

*Q.* Is vaccination compulsory in your parts?

*A.* It is.

*Q.* Is there a column for name in the vaccination register?

*A.* There is.

*Q.* Can the name be not transferred from the vaccination register to the birth register?

*A.* That would be more difficult. This register is kept by the health officer while the birth register is kept by the police. There should be a column in that very register.

*Q.* Who should keep this register of marriages?

*A.* Why not the present sub-registrars. The sub-registrar may be appointed registrar of marriages without any more expense.

*Q.* Would you recommend that in all these cases a free marriage certificate should be granted to the reporting individual?

*A.* Yes.

*Q.* Do you think that would be helpful?

A. It would be.

Q. Do you think a free birth certificate would similarly be helpful?

A. Yes.

Q. Is it practicable even if it means some more work to the Municipal Boards?

A. It is practicable.

Q. What is the system of registration of births in rural areas?

A. It is the Kotwar who keeps the register. It is written by the Mukaddam of the village, it is taken once a week to the police outpost and signed by the man in charge and then the entries are copied at the Head Police Station. This book is called the 'Kotwari Book'.

Q. Do you think that system is working satisfactorily?

A. It is working satisfactorily. The only thing is that after one book is finished it goes to the custody of the police. Sometimes it is kept in the custody of the Kotwars which should not be done. It should be kept in the police office.

Q. Have you got village panchayats in Jubbulpore?

A. No.

Q. Have you got compulsory primary education in force?

A. Yes, it is in force in Jubbulpore city in some wards and in some wards it will be made compulsory this year.

Q. In rural areas?

A. It is not compulsory yet. In some places there are girls schools at long distances. I was a member of the Education Committee and we gave our report only last year. The Government has adopted that.

Q. You have recommended the establishment of girls schools in rural areas and also in towns?

A. Yes.

Q. Are there any girls schools at present?

A. We have opened three and we had already three. There is one high school.

Q. In rural areas?

A. I have not much knowledge because I am not in the District Council.

Q. Do you think with the spread of education the age of 16 would work more smoothly?

A. Yes, not till then. The girl would then be a healthy girl and besides she will learn everything regarding motherhood.

Mrs. Nehru: Besides the Kayastha community and the Marhatta Brahmins are there any communities amongst whom marriages take place later than 12?

A. No.

Q. Is it because they believe in the sanctity of pre-puberty marriages?

A. They do not believe.

Q. Is it due to the reform movement or have they held these views from the very beginning?

A. The orthodox are now discarding their orthodoxy.

Q. All sections of the Marhatta Brahmins and Bengali Brahmins marry after 12 or only the reformed section?

A. Only the educated marry after 12. But the Marhattas, as we have got them in Jubbulpore, are all educated.

Q. Have you got a large number of widowers marrying young girls? In some communities the widowers can't get older girls and it is there that the mischief is done.

A. There are not many cases.



Q. Do you think the Age of Consent law has been effective so far?

A. It has not been very effective.

Q. Supposing the marriage age is not fixed at 16 but at 14, then how can we make the law effective between the two years intervening from 14 to 16?

A. That would not solve the difficulty.

Q. You think if 14 is fixed as the age of marriage it would be impossible to make the consent law effective?

A. That would be a defective law.

Q. Then what is the use of raising the age to 16 if it won't be effective?

A. If the Committee gives its opinion that it should be fixed at 16 why will it not be fixed at that?

Q. The Legislature may not agree?

A. Then the Legislature would be in the wrong. We would have a wrong law on the statute book. If there are two ages, one for consummation and another for marriage there is bound to be this difficulty and that is why I have suggested the same age in both cases.

Q. Supposing it is not possible can you suggest anything else as the second best?

A. Another law may be enacted that Goana should be performed in two years' time or the girl may not be sent to the husband's house for two years.

Chairman: Otherwise would you bring the consent law down to 14?

A. No.

Mrs. Nehru: Do you think if Goana is penalised people will agree to it?

A. When there is a penal law it will be enforced.

Q. But won't they feel it to be a hardship?

A. There is no help for it, if we want our girls to advance morally and to have a nation made.

Q. What is the punishment you would prescribe for the breach of the marriage law?

A. 2 years.

Q. Is it not rather too severe. Many cases may happen out of ignorance of the law and the ignorance of law will be no excuse?

A. Maximum will be 2 years and the Magistrate will exercise his discretion and give whatever he considers reasonable. It may be a month or two only.

Q. Would you have this punishment for the mother and the father both?

A. Both the father and the mother and the priest also.

Mr. Shah Nawaz: If he has knowledge of the age of the girl?

A. The priest must know it. He has to see the girl and the boy and he sees the horoscope of both the girl and the boy.

Mrs. Nehru: Can you tell whether this law of the Age of Consent is broken in many instances?

A. We have not been able to find cases. In fact, there have been no trials.

Q. Still cases have occurred?

A. May have taken place.

Q. Do you think they are taking place even now?

A. It is likely that they are taking place.

Q. What is the reason that they are not brought to light?

A. The educated people have not been marrying before 13. The people who are not educated and are in rural areas might have done, that but in their case the girl goes to the husband's house after a year or two.

Q. But you have said all communities except one or two marry at 12. Consummation therefore might be taking place in many cases before 13 and it is a secret act which nobody has the facility to know.

A. I would suggest that the girl be not sent to her husband's house if she is married before that age.

Mr. Shah Nawaz: But would you make it an offence?

A. Yes.

Q. But she sometimes goes to attend some ceremonies or the husband may be ill, the father may be ill and they may consider it a great hardship not to have the daughter-in-law in the house?

A. If the husband is ill there is no cure, but if any other person is ill she may not come.

Mrs. Nehru: If you provide two years' punishment the law may defeat its own purpose?

A. That will be the maximum, the Magistrate can exercise his discretion in awarding the punishment. In by 30 years' practice I have done at least 10,000 theft cases. In one or two cases only perhaps the maximum punishment might have been given and that too in especially bad cases. Generally a small fine will be imposed and sometimes the man may be sent to jail only for a weak or so. It is seldom that maximum punishment is given.

Q. Even for the breach of the Goana law will you have the same punishment?

A. I will have the maximum of 2 years.

Q. Will this maximum be for cases below 12 also?

A. In cases below 12 a higher punishment will be given. The same punishment of 10 years may be retained.

Mr. Shah Nawaz: Can you tell me the names of the communities who do not observe the Goana ceremony?

A. The Bengalees do not observe this ceremony.

Q. Do they marry before 12?

A. They marry about 14.

Q. Could you tell me the names of the communities who do not observe the Goana ceremony, but marry early?

A. I don't think there is any community like that. Almost all classes here observe the Goana ceremony. As a rule, the Hindustani people do not observe it.

Q. What is the opinion of women regarding this question of early marriage and early consummation?

A. All educated women want to raise the age.

Q. What about the women from the countryside?

A. Even they do not want that their girls should be married early and consummation should take place early.

Q. But don't the grandmothers want to see grandsons soon?

A. The absolutely ignorant and the low class people want the marriage early but they do not see the seriousness of the thing.

Q. Are you quite sure that the girls of the lower classes will not go astray if they are not married before 16?

A. I am sure regarding the rural areas. In the towns it may be different because there are so many heterogenous classes coming together but in villages it is not so.

Q. In the towns is there danger regarding the poor girls who go to factories?

A. Regarding the labouring classes there is some danger. But generally the mother accompanies the girl or the father accompanies her; it is only in cases in which there is no father or mother that there is some danger.

Q. Don't the poor classes marry their girls early on account of poverty?

A. Poverty has not got much to do with marriage. They have to spend the money. It is not on account of the burden of the child that they marry early. In fact, the child earns something for them.

Q. They take labour from their daughters-in-law but not from their daughters.

A. Not necessarily. They do take work from their daughters as well.

Q. Would you like that a preliminary enquiry should be made by a Magistrate before summons is issued to the accused?

A. I think that would be a better course.

Chairman: Are you not further prolonging the trial?

A. That would give further advertisement to the law, and after a few cases you will find that the law has taken effect.

Q. Do you think that the law fixing the age at 16 would be acceptable to the orthodox Brahmins?

A. Some people object no doubt but I think they will come round. In the beginning any change is always opposed but when they see the good of it they are bound to carry it on.

Q. Do you think a resolution moved by one of you in the local Legislative Council would be accepted?

A. There is a resolution before the Council to-day in the name of Mrs. Anusuyabai Kale in the following words:—"This Council recommends to the Government to convey to the Government of India its considerate opinion that the legal age of marriage for girls should be raised to 14 and for boys to 18 and as a step towards this end it supports Rai Bahadur Harbilas Sarda's Child Marriage Bill as amended by the Select Committee of the Legislative Assembly".

Dr. Beadon: Could you tell us any cases which might have come to your personal notice in which injury has resulted as a result of early cohabitation? You mention many communities in which marriage takes place at about 12.

A. I know one or two cases. As a rule you will find at Jubbulpore that in many cases the first child of a mother is produced dead. A girl was married at 13 and she became mother at 14. The child died after 6 months of birth. It was a ricketty child.

Q. What community?

A. Bengali Brahmin.

Q. What about the mother?

A. She was also not healthy.

Q. Was this recently?

A. It was long ago.

Q. Do you know of any recent case within the last three or four years?

A. There was another case in which the child died. The mother was only 13 years old. She was a Bengali Brahmin. She remained confined to bed for 6 months after delivery.

Q. What about the baby?

A. The baby died.

Q. Is that a single case or you get lots of cases like that?

A. There are many cases.

Q. Is it because they cannot nurse and the people are very poor?

A. They were not poor people. There was no question of bad feeding or bad attendance.

Oral Evidence of Dr. L. SEN, Health Officer, Nagpur Municipality,  
Nagpur.

(Nagpur, 24th January 1929.)

*Mr. Kanhaiya Lal:* How long have you been Health Officer of the Nagpur Municipality?

A. 7 years.

Q. Before that?

A. I was in the War.

Q. You have given us figures relating to deaths of males and females during different age periods. Now can you tell us why infant mortality is so high in Nagpur? Here you have given it as 263 Hindus and 227 Muhammadans. Why is it so high as this?

A. We have been trying to do as much infant welfare work as possible. It is mostly due to the economic factors and ignorance. These are the primary causes. Unless the ignorance of the mothers is removed, this state of affairs is likely to continue.

Q. Do you think that early consummation and early maternity are amongst the causes that contribute to high infant mortality?

A. Yes; certainly they are contributory causes.

Q. Do these devitalise the system of the mothers?

A. Yes.

Q. Do they make the mother and the children liable to disease?

A. Yes; they make the children less liable to survive and mother more liable to disease.

Q. What is the usual age of marriage in Nagpur city?

A. It varies in different communities. Amongst the educated class of Hindus it is from 14 to 16.

Q. Amongst the lower classes?

A. It is early. It varies from 7 to 10.

Q. What is the practice here as regards consummation of marriage?

A. I have not got much experience about marriages here.

Q. Do you think there are cases of consummation of marriage before puberty?

A. Not to my knowledge; but I am not in intimate with local conditions.

Q. Do you think that girls are sent to their husbands' houses after puberty?

A. Not necessarily.

Q. Are they sent even before puberty?

A. Yes; but I cannot say whether consummation of marriage takes place before puberty or not.

*Dr. Beadon:* In your statement we find that you have given figures of deaths due to difficult labour. Do you think these figures are correct, or do you think there should have been more deaths from labour?

A. This is as far as we can get information. But I do not think this is even a third of the actual deaths. Our statistics in this respect are unsatisfactory.

Q. Why are they unsatisfactory?

A. Information about the causes of death is unsatisfactory.

Q. We find that there is a very high mortality amongst Christians in Nagpur city. At the same time I notice that there are very few Christians born. Why is the mortality so high amongst them? Are they very poor?

A. In the city proper the Christians are very poor. They are generally converts from the lower classes.

Q. Do they practise early marriages?

A. I do not think so.

Q. You say that the weavers are a fairly healthy people. Are they poor?

A. They get a good living wage. They are better off than the ordinary working-class people.

Q. You say that the men and women amongst them are healthy. What about the children?

A. There is not much infant mortality amongst them.

Q. Are they ignorant people? We are trying to find out what the causes are which lead to infant mortality. Can you give us the figures of infant mortality by classes?

A. Yes; I will send you the figures.

Q. What is the age of marriage amongst the higher class Muhammadans?

A. My knowledge about Muhammadans is rather meagre.

Q. Have you come across any cases in which there has been injury to the girl as a result of early consummation?

A. No; I have not.

Q. What is your opinion about the general health of the children of this city?

A. On the whole it is not satisfactory at all.

Q. Is there any special cause for this?

A. So far as Nagpur city is concerned, the sanitary condition of the city is bad. I think that it is one of the causes of the high infant mortality.

Q. Have you experience of any other towns besides Nagpur?

A. No.

Q. What do you include under "fevers"?

A. Malaria, Typhoid, Pneumonia, etc.

Mrs. Nehru: Have you found any difference in infant mortality during your tenure of office here?

A. We have been doing some child welfare work, and we have found that infant mortality amongst babies who are looked after from the Welfare Centres is much lower than that amongst other babies. We get reports about them year after year, and we find that there is an appreciable change for the better?

Q. Do you do pre-natal work?

A. Yes; only a year or two ago we started pre-natal work.

Q. Do you think that it effects the children born for the better?

A. The number of cases we have got till now are not large enough to enable us to come to any conclusions yet.

Q. Are your activities confined to the city only?

A. Yes.

Q. Have you found very many young mothers coming to the Welfare Centres?

A. Yes.

Q. What was the age of the youngest mother that you came across?

A. I do not think I have seen mothers younger than 14 or 15.

Q. Amongst which community is child-marriage mostly practised here?

A. In different communities it is different. I cannot give you accurate information about that.

Q. Have you any impression about it?

A. My impression is that the lower classes, particularly those who are called *Pundis*, have got early marriages.

*Mr. Bhargava:* Do you know the conditions of the labouring classes in Nagpur?

A. Yes; I have to go round amongst them as well.

Q. Do you know the conditions of the labourers in the mills? Do you think that the infant mortality amongst them is much greater than in other people?

A. We have to take into consideration two different conditions, namely those who live outdoor life and those who do not. Those who live an outdoor life are more healthy, and the infant mortality amongst them is not high; provided of course you take into consideration the economic factor which certainly plays an important part.

Q. What will be the population of the labourers in the mills in Nagpur?

A. I do not think they will be more than 20,000.

Q. And outside the mills?

A. The day labourers will be another 15,000 to 20,000.

Q. What about the registration of births in this city? Is it satisfactory?

A. When the birth is first registered there is no name of the child.

Q. After the child has been vaccinated do you transfer the name of the child to the birth register?

A. Yes; vaccination is compulsory after 6 months, and the name of the child is entered back in the register within a year of the birth of the child.

Q. Who brings information about the births?

A. Information is obtained both by the police and the municipality. The notes of the two are then compared.

Q. What is the use of having two registers?

A. The municipality have not got a proper staff. So we take advantage of the police; and whatever is missed in the one register is checked by means of the other.

Q. Is there obligation laid on the parents to report?

A. Yes; with a penalty for omissions.

Q. Have there been cases in which that penalty has been enforced?

A. Yes.

Q. Are there public burial grounds here?

A. Yes; a person can apply for special permission to bury dead bodies in a particular place.

Q. Do people know about it?

A. Generally they do not know about it.

*Mr. Shah Nawaz:* What is the proper age for consummation of marriage?

A. Not less than 16. It is the minimum.

*Mr. Yakub:* Would you like to have a law fixing a minimum age for marriage?

A. Yes.

Q. Do you think that the law raising the Age of Consent will not help?

A. To my mind there will be a lot of difficulties in the way. Even if such cases are brought to light it would not result in anything good either to the husband or the wife.

Q. Supposing it is not possible to have a law of marriage, would you then have a law of consent?

A. Yes; the age will have to be 16.

Q. What age will you have outside marital relations? The present law is that if a girl of 14 has cohabitation with a stranger with her consent, the man is not guilty. We have to find out whether a girl of 14 is sensible enough to give consent to cohabitation in the circumstances in which girls are generally seduced and persuaded, and whether she can exercise proper

judgment. Under these circumstances what in your opinion should be the age for consent in extra-marital cases?

A. Taking all these points into consideration, I should recommend 16, if not a higher limit. It involves the girl's understanding all sides of the case before giving consent.

Q. According to your opinion as a medical man at what time does a girl become physically mature for becoming a mother? When is she fully developed to bear the burden of maternity?

A. For proper development I think it is more near 18 than 16.

Q. Can a medical man for certain find out the difference in age of one or two years?

A. I cannot say, because I am out of touch with those things now.

Mr. Kanhaiya Lal: Do you think that the orthodox community will accept 16 for marriage?

A. I think from an economic point of view people are drifting towards it.

Q. What about the lower classes? Do you think the lower classes are likely to accept this law; and also the orthodox classes?

A. It is a question of looking at it from a national point of view and insist on its being done. It is our duty to prevent such evils.

Q. Have you got brothels in this part of the country?

A. Yes.

Q. Do you think that we would be able to check girls under 16 if we fix 16 for extra-marital cases?

A. It all depends upon how the police work in that respect. We can enforce such a law.

Q. Is there a law regulating brothels and requiring their registration?

A. No; we have not got it in C. P.

Mr. Mitra: Have you experience about these questions in Bengal?

A. Yes. I have spent a good deal of time in Bengal.

Q. Can you tell us if girls in Bengal attain puberty earlier than girls in C. P.?

A. In Bengal puberty is a little earlier.

Q. What is it due to? Is it due food or climate?

A. My impression is that it is due to climate.

Q. Do you find that where early marriages are practised, there girls attain puberty earlier than in other classes?

A. I do not think so. I think climate has more influence.

Q. Are you ready to provide for exemptions in hard cases, under the marriage law? For instance, would you grant exemptions in cases in which a man is about to die and there are no near relations; and the man wants to see his daughter well settled in life?

A. No; because in that case everybody will try to take advantage of the exemptions, and the exceptions will become the rule.

Q. Would you recommend their applying to the district judge for the granting of exemptions?

A. I think it would lead to corruption. It is not desirable.

Q. You might know that there are orthodox people who sincerely believe that they should marry their girls before puberty, and they faith in the Scriptures. What punishment would you suggest in their cases?

A. The difficulty is that it would lead to unpleasantness if the husband is imprisoned; and fine alone will not be deterrent, because a wealthy man will break the law and pay the fine. I think this is a question for practical brains and I cannot give any opinion about it.

Q. Supposing the parents are punished and not the boy?

A. Supposing A is the son of B and X is the daughter of Y, and A and X are married; I do not think the newly married couple would be happy if their parents are sent to jail. But our point will be to prevent marriage, and if you want to enforce the law you must be prepared for a certain amount of unpleasantness.

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## Oral Evidence of Mrs. W. TARR, Honorary Secretary, Child Welfare Centre, Nagpur.

(Nagpur, 25th January 1929.)

*Dr. Beadon:* Are you interested in the Child Welfare Works?

A. Yes. I am the Hon. Secretary of the Child Welfare Centre here. We have in all 38 centres. In Nagpur there are 8 centres and the remaining centres are all over the province. We have a very extensive system of training Dais and we have got Health Visitors and Supervisors in charge of these centres for watching the work of the Dais.

Q. Do you come into close contact with these young mothers?

A. We send our Health Visitors and Supervisors to look after these mothers and they come in contact with hundreds of young mothers who are kept under continued supervision.

Q. Have you come across any cases of young mothers?

A. A great many young mothers can be found from my registers. Their ages are put down as 16 but they are not actually 16. We are only concerned with the babies of these young mothers. What we find about these babies of young mothers is that these babies may live but these young mothers do not know how to rear them up and we do find a very great difficulty to get these mothers to be able to feed their babies. As soon as a baby is brought from home to our Centre you will find that the baby is not doing well, the mother cannot rear the baby and in many cases these mothers are immature.

Q. Do you think that these mothers come from a poor society or do they come only on account of immaturity to your Centres?

A. The mothers around the Civil Station are very well off here and they are very well looked after. We have got a very good municipality here. Especially in some parts of Districts you will find that the state of things is very much worse.

Q. Do you get a great deal of tuberculosis or any other diseases here?

A. Not so much here but in the southern parts of this province there is a good deal of tuberculosis.

Q. We are told that it is not on account of early maternity that these children and mothers suffer but it is on account of repeated pregnancies that the mothers and children also suffer. What is your experience?

A. These mothers lose their children because they do not know how to rear their children. We are looking after these children and we find it a very great difficulty with these child mothers. Even if you look at the babies who are given artificial foods, you will find that they are not strong. These babies haven't got the same energy as the babies of older mothers and the children of these young mothers are very small.

Q. Do you find a large number of girl mothers below 16?

A. 11 per cent. of the girls are below 16.

Q. Then do you mean to say that there is a definite deterioration of the children of these young mothers?

A. Yes.

Q. Have you had an opportunity of seeing a young mother at 13 or 14 with her offspring and a mother of 17 or 18 with her offspring?



A. Yes.

Q. Do you think that the children born to mothers of 17 or 18 are fairly healthy?

A. I don't think so.

Q. Don't you think that a mother of 17 or 18 is able to nurse the child?

A. No.

Q. What age would you suggest as the fit age for an Indian woman to begin to bear children?

A. 18 to 25.

Mr. Kanhaiya Lal: What age would you recommend for the consummation of marriage?

A. I would make it 17.

Q. Have you had any opportunity of speaking to any of the Indian ladies about the marriageable age or of the Age of Consent law?

A. No. One thing I wanted to tell you is this. I was a Delegate in the Child Welfare Conference in England last year, and this question of maternal mortality came very much before the conference even though the maternal mortality there was 5 per thousand whereas here I have worked it out at 80 per thousand, and in Sweden you will find that the maternal mortality is only 2.5 per thousand which is the lowest figure in the world.

Dr. Beadon: You say that the maternal mortality is only 2.5 in Sweden. Is it because the families are very small?

A. They have very large families. They don't do anything about birth control. All work in the fields and in the farms. They are very muscular. They rear their children all right.

Q. Is there any child welfare work done there?

A. They are not having many women's hospitals. They rather have many maternity homes and specialize in maternity. They are having very strong regulations for a midwife and every midwife is under the supervision of the State.

Mr. Mudaliar: What is the minimum legal age of marriage in Sweden?

A. I don't know. It is only the babies that we are looking after because these babies do not thrive as the mothers cannot adequately feed them, and the children themselves don't take the nourishment.

Chairman: Do mothers who are not supervised by you, come to your Centres for getting medicine or for the babies being shown?

A. Yes.

Q. When these mothers come do you take their ages?

A. We only take the ages of the babies and we don't ask the age of the mothers.

Q. Would you say that you are getting a large number of such girl mothers?

A. Yes.

Q. Do they bring their babies with them?

A. Yes.

Q. I mean apart from the supervision where your people go and actually look up the cases, do you find other cases coming to your centres and asking for help?

A. Yes. We don't follow up the mothers but we only follow up the children.

Mr. Yakub: Why is mortality greater amongst women than men between the ages of 15 to 20 and 20 to 30?

A. It may be due to the strain of child bearing, due to a certain amount of purdah and it may be due tuberculosis also.

Q. We were told by certain witnesses at Ahmedabad that the mortality of children amongst girls who are working in factories is greater than amongst the children of other women. Is it a fact?

A. I should think this is quite possible.

Q. You have got factories here also in Nagpur. Is it also your experience?

A. We don't get many children from factory girls. They have got their own centres which are very good institutions.

Q. As regards infant mortality do you think that it is mainly due to early maternity or due to frequency of pregnancy?

A. Early maternity is one factor for this. I won't like to say how far it affects it. What I say is that these young mothers do not know how to rear up their children.

Q. Is frequency of pregnancy also responsible for the weakness of the children?

A. I think it is a cause.

Q. At what age generally do the women in this part of the country attain puberty?

A. This is a medical question which I cannot answer.

Mr. Shah Nawaz: I don't think that the child mother is unable to feed her child after six or seven months?

A. As a matter of fact I personally think that the mothers should go on feeding their children for a year.

Q. Supposing they become pregnant after six months, don't you think that it will be difficult for them to feed their children?

A. Yes, I think so.

Mr. Kanhaiya Lal: On examination of your register I find that the mothers who gave birth to children at 14 or 15 are mostly from the lower classes, say the Gonds, Mahars and some few Muhammadans. Do you think that early marriage is more common amongst these people than amongst the higher classes?

A. I don't know anything about these things. Our welfare centres are designed for the benefit of the poor. We have not yet begun a welfare centre for the middle class. At the end of this year we hope to do so.

Q. Can you tell me what is the usual age of marriage amongst the lower classes of people?

A. I don't know.

Mr. Mitra: What do you consider personally to be the ideal age for marriage?

A. I suppose 17 will do for India having regard to the economic conditions and many other things. I think 17 is practical.

Q. Do you find from your experience that a girl attains maturity here earlier than in Europe?

A. I am not a doctor to answer this question. I am doing welfare work.

Q. I would like to know what do you think are the causes which account for this disparity of mortality in India and in other countries?

A. There are great many causes. I really think that this is a medical question.

Q. Can you suggest anything which this Committee can undertake to improve these conditions in India?

A. I think legislation is the best thing.

**Written Statement, dated the 24th August 1928, of Mr. LAXMI NARAYAN, B.A., B.L., Retired District and Sessions Judge, Akola (Berar).**

1. Yes. There is a good deal of 'dissatisfaction' amongst the educated community of India, with the State of law as to the Age of Consent as contained in Secs. 375 and 376, I. P. C. The reason is that many young girls of the age of 14 or above who are immature in understanding are easily led away or induced to sexual intercourse with persons of dissolute character and there is no protection for such girls and these girls of tender age and of immature understanding do require to be protected by the State from the allurements of designing young men. Some of them are led into the life of infamy due to their having once fallen a victim to the lust of some such people.

2. In my opinion the time is ripe for making an advance on the present law and the reasons have to some extent been indicated in answering the first question. Girls of tender age are easily seduced and led into the life of vice by licentious people and the result is that they not only at times contract venereal diseases and fall victim and are compelled to lead the diseased life but spread the disease in their turn. This has to be restrained and prevented, as far as possible by the State.

Another result is that their progeny becomes weak and emaciated and the future generation has also to be prevented by the State. Immorality has increased to a considerable extent and this should be stopped also by the State.

On these grounds, I say, that the circumstances justify making an advance on the present law. In addition, there is a keen agitation in the country on this point and no one objects to the Age of Consent being raised and there is no reason as to why the Age of Consent in India should not be same as the Age of Consent in other civilised countries. Ordinarily, girls in India owing to its peculiar climatic conditions attain maturity at or about the ages of 13 and 14 and the Hindus Ayurvedic literature enjoins that a woman is not fit for sexual intercourse until she has passed through 36 monthly courses. On this ground also it is necessary at least to raise the Age of Consent, so far as sexual intercourse of a girl with a stranger is concerned.

3. In this part of the country, namely, Chhattisgarh Division, crimes of seduction and rape are on the increase and their number is considerable. Amendment of the law in 1925, raising the Age of Consent to 14 years, has not succeeded in preventing or reducing such offences. The reason is that a sort of well considered and organised trade is carried on for the seduction of the girls for taking them to the Punjab and the activities of this trade succeed to a very large extent in Chhattisgarh, where girls move about freely and are easily impressed to leave their homes being tempted by a better life elsewhere. I would therefore propose that the Age of Consent outside the marital state should be raised to at least 18 years and also the age of the minor for the purpose of kidnapping in British India should be raised to 18 years. In these cases of seduction and rape, it is difficult to prove the age of the girls and unless the age is raised to 18 years, the difficulty of proving the age would not disappear.

4. On this question I regret I cannot give any considered opinion, as cases of rape within the marital state have not come up before me. I am afraid, having regard to the conditions of the country, that any legislation to raise the Age of Consent within marital state would not have the desired effect. The transgression in this respect is not likely to be brought to court. Any improvement in this line should be looked to towards social reform, and progress and advance in the views of the people. In my opinion it should be left to the public opinion and the social reformers to eradicate the evil. It will take time to stimulate public opinion in this direction, but nothing else can possibly prevent the consummation of marriage when the girl is matured.

5. On this question I cannot give any opinion worthy of its name. But I presume that 13 or 14 may be taken as the ages at which a girl ordinarily matures in this part of the country.

6. To my knowledge, cohabitation before puberty is rare except in the case of a grown up widower marrying a girl and these cases are rare. Cases of cohabitation soon after puberty are as a rule common amongst all communities and classes of people. These cases do not come in court and I have never had occasion to hear of such cases or to try them.

7. The answer to this question requires study of Hindu religious books and as I do not know Sanskrit and I have not studied the subject, I cannot answer the question. But what I think is that it is a rule that as soon as a girl matures a ceremony is performed, called Garbhadan ceremony and the girl soon on attaining puberty is sent to the house of her father-in-law. But in my community, and it may be stated that generally in all castes, the girl stays in the house of the father-in-law for a few days and returns to his father's house, unless there are special circumstances such as poverty of the parents and the husband being a grown up man living in the house and insisting on his wife staying with him. I do not think that there is any penalty prescribed or observed for the breach of this ceremony.

8. Yes. Gaona or Garbhadan or Pathoni ceremony is usually performed in this part of the country and I should say, throughout the Central Provinces and Berar. This ceremony is performed on the girl's attaining puberty and consequently it coincides with the consummation of marriage. This ceremony is generally performed within a short time, rather, within a few months on the attainment of puberty but there is no limit to the time.

9. The question whether the attainment of puberty is sufficient indication of physical maturity to justify consummation of marriage is one for a medical student to answer, rather, for one of my station in life, but having read a number of books on the subject written by German authors and translated in English, I should say that nature does not prohibit consummation of marriage on the attainment of puberty. On the other hand, the very system of appearance of menses indicates that the subject is fit, so far as her organs are concerned, to bear a child and naturally this indicates that she can bear consummation of marriage. But in my opinion, this is quite a different thing from leading a married life and having frequent and continued sexual intercourse. I should say that a girl on attaining maturity going to the house of her husband and having sexual intercourse for a few days is not likely to suffer to any extent, but if she continues to live on with her husband and to continue sexual intercourse frequently and recklessly, she is likely to ruin her health as well that of her husband. I should say that according to the Hindu Medical science and also to the opinion of some German authors, the girl should restrain from enjoyment of sexual intercourse for a least 36 months on attaining puberty. This was also the practice in India before people were educated and were anglicised. Custom amongst my community, even at present, is after marriage the girl goes to the house of her husband for a couple of days and then she is brought back and on attaining puberty, a Gaona ceremony is performed and after the performance of the ceremony she does not live regularly in the house of her husband for 3 years and the Gaona ceremony is not performed until 3 years have expired from the date of the marriage.

10. In my opinion, the girl in India below 18 is not competent and cannot be competent to give an intelligent consent to sexual intercourse, with a due realisation of consequences.

11. No.

12. Yes, very much.

13. Yes, to a certain extent.

14. No. On the other hand in this part of the country women are reluctant to part with their girls and generally postpone sending them to the house of their husbands and also delay performance of Pathoni ceremony.

15. Yes. Considerable difficulties are experienced in determining the age of the girls in connection with offences of rape and kidnapping. The reason is that there is seldom brought and any reliable evidence of the age of the girl and the records of the birth of children are not satisfactory. Oral evidence often breaks down in cross examination in such cases. Medical evidence is not quite good. In one case the medical evidence was that the girl was 12 years of age, but the birth register showed that she was over 14. I would therefore suggest in order to remove or minimise these difficulties, that in all such cases, arrangement should be made to get the bones of the girls examined by X-rays and her age be proved. This will require installation of the X-rays apparatus in each district and I think the time is ripe for making a move in this direction.

16. Yes.

17. Yes. For a marital offence I would follow the suggestion of Dr. Gour made in his Bill and provide a Sec. 376 (a) with the punishment proposed by him. For other kind of offence (extra-marital) I would divide the offence into two classes:—

(1) One in which the age of the girl is below 16 years and would keep the present punishment.

(2) Other cases in which the age of the girl is over 16 years and below 18 years.

In the latter class of offence I would fix the amount of maximum punishment to be two years with an alternative sentence of fine and would make the offence bailable.

18. Yes. The only difference that I would propose in the procedure within the marital state is that the trial should be within closed doors and that the punishment should be as light as possible having regard to the injury sustained by the wife.

19. No. The present safeguards of the procedure of trials are sufficient.

20. In this connection I will say that Penal legislature fixing a higher Age of Consent for marital cases is not likely to be at all effective, but my considered opinion is that legislation fixing the minimum age of marriage would be more effective and prevent such offences to a very large extent and if such legislation is passed then, though it may take time, the inevitable result in course of time will be to raise the Age of Consent within and without the marital relations. I should think that the second alternative given in the question would be more in consonance with the public opinion of this part of the country.

21. In the present State of the country I would rely on both remedies to secure the object in view, without the State. Taking the bold step of strengthening the Penal law. Social reform by means of education and social propaganda which must necessarily be very slow and of snails-like speed, will take a very long time single handed to attain the object aimed at, I would therefore suggest that the State should take the matter in hand and strengthen the Penal law and at the same time press progress of social reform by means of education and social propaganda, through its agencies and through the social reformers as well.

**Oral Evidence of Mr. LAXMI NARAYAN, B.A., B.L., Retired District and Sessions Judge, Akola (Berar).**

(Nagpur, 25th January, 1929.)

**Chairman:** Do you know that the present law of the Age of Consent is 13 within marriage and 14 outside marriage?

A. Yes.

**Q.** Have you any reason to think that in the Marwari community or in other communities that you know of this law is broken?

A. Yes, I think so.

Q. Do you think that this law is broken by the Marwaris?

A. It is not only broken by the marwaris but by all other communities, and especially when the husband is a widower, it is broken.

Q. Do you think that if we raise the Age of Consent by a year or two, it will by itself be effective?

A. It is very difficult to answer this question. Firstly if the law is broken, the case is not likely to be known to outsiders and secondly if the law is enacted it will not at all be effective.

Q. So you don't think that any more cases will come to light simply by raising the age?

A. No. Persons who are interested in bringing the matter to the court are the very persons who will be interested in hushing it up.

Q. Do you regard early motherhood, i.e., motherhood before 13 and 14, an evil?

A. Decidedly.

Q. Do you know of any instances of girls becoming mothers before they complete 13 years?

A. Personally I do not know.

Q. Have you seen any?

A. No.

Q. If you have not seen any such cases then why do you say that it is an evil?

A. I have read from books, girls becoming mothers at 13 or 14 is an evil but I have no personal experience.

Q. But have you not seen Marwari girls becoming mothers at 14?

A. Many may have become mothers at this age but I don't know and I have very little time to attend to these things.

Q. You think that a law fixing the minimum age of marriage would be more effective. Is that your idea?

A. Yes.

Q. Why would it be more effective?

A. Because if you fix the age at 12 then people will be compelled in many cases not to marry their girls before that age and gradually after ten or twenty years this age may be raised to 14 and what we aspire for may be gained.

Q. What is the age that you would recommend for marriage to start with?

A. Looking to the different views of different classes of people and also looking to the present conditions I would fix the minimum age for marriage at 12.

Q. Would this secure our object?

A. No, it would not. There are some people with whom marriage is one thing and consummation is another thing.

Q. But you say that cases of consummation will never be discovered and they will not come to court. So the other alternative is to have a marriage law. Is it not?

A. Yes.

Q. But if we have a marriage law at 12 will it serve our purpose because consummation may take place at 13 or 14?

A. But those people don't consummate the marriage at the time of the marriage.

Q. We all Hindus know that no consummation takes place at the time of the marriage when the girl is 12. But don't you think that consummation cannot be prevented soon after puberty?

A. Consummation cannot be prevented soon after puberty.

Q. Then what is the use of fixing the age at 12 for marriage?

A. Ten years after raise it to 13 or 14.

Q. Do you think that the present Age of Consent law which stands at 13, is effective?

A. The present Age of Consent law is practically a dead letter.

Q. Therefore we want a method by which early maternity could be prevented. You say that the Age of Consent law has not been effective. Then the alternative is fixing the minimum age for marriage and you suggest 12 which will not serve our object. So can you suggest any method?

A. If you go higher up in fixing the age, there is the opposition of the orthodox people and we would not succeed in having a legislation.

Q. Are you willing to have a law fixing the marriageable age at 12 and an age of consummation law at 16?

A. Yes.

Q. Do you think that the raising of the Age of Consent will give the girls any protection?

A. Yes, in many cases it will give protection. If there is a law some cases would be prevented and some wouldn't be prevented.

Q. Do you suggest any method by which consummation can be prevented though marriage may be permitted at any age as people like?

A. It is impossible to suggest any method.

Q. Some people have proposed that no marriages should take place before 14 and I take that you are aware of Sarda's Bill. So will you let me know what is your opinion about this matter?

A. Personally I would like that the age of marriage should be fixed at 14 or 15 but what I say is from a practical point of view looking to the present condition of the country whether you will be able to pass it.

Q. Is there any custom of Gaona amongst the Marwaris and other communities?

A. Gaona ceremony is now disappearing amongst the Marwaris. Amongst other communities where it is performed, it is only performed after a girl attains her age and then she is finally sent to her husband's house.

Q. At what age are the girls sent to their husbands' houses?

A. It is very difficult to say that. The age is decreasing. The girls mature now earlier than 13 or 14.

Q. Would you say that this evil of early maternity is more amongst the Marwaris than amongst the other communities or it is just about the same.

A. It is prevalent in them but whether it is prevalent to the same extent, I cannot say.

Q. You know the evil in your own community. One Marwari came to us to give evidence and he said he had married two wives and he lost them both and on his being asked what the reason was, he said that early maternity was an evil and his community had realized it. Do you confirm what this man has said or would you say something else?

A. I would not be able to make a comparison but then as these people live at home always, the evil ought to be a little greater.

Q. What age would you recommend for the Age of Consent outside marriage?

A. 18.

Q. You are very generous here. Why do you want 18 here?

A. I have given my reasons in answer to Question 3.

Q. I want to know why you make a distinction between the age of consummation within marriage and outside marriage?

A. In one case it may not be very moral but it is lawful and in the other case it is immoral and unlawful.

Q. Have you any reason to think that the children of early mothers die more than the children of older mothers?

A. Personally I have no idea about this.

Q. Do you think that the evil is so widespread that we should undertake legislation for the purpose?

A. Yes, I think the evil is great. I am considering of Chhatisgarh and I think legislation for that part of the country is urgently needed.

Q. But you cannot make legislation for that district alone?

A. One speaks of his experience of the place. I think it is the duty of social reformers and of the State to have minimum age of marriage fixed.

Q. Generally speaking you think it is advisable to have a law on the subject.

A. Yes.

Q. Are you not satisfied that in course of time social opinion will change and the age will go up?

A. It will but the assistance of the law is very necessary.

Q. If there is no law do you think the evil will expand?

A. If there is no law the evil will not expand; but it will go on decreasing though very slowly.

*Mr. Bhargava:* If there is no law do you not think there will be no restriction on marriage? Some people will continue celebrating marriages of their daughters at a much earlier age than before.

A. No.

Q. You seem to say that previously the practice was to wait for 30 or 40 periods after the first menses and now being anglicised they do not follow that practice, that is to say the present age of consummation is earlier than it used to be. Is it so?

A. Yes, that follows but then marriages were being performed before 12. I was married at 9 and my wife was 8 but now such marriage are rare.

Q. When do marriages take place now generally?

A. Between 11 and 12.

Q. Does consummation take place earlier than before?

A. That depends on the time of marriage but in some cases it does take place earlier.

Q. Will you give some of the causes which in your opinion make for this condition?

A. Formerly marriages used to take place earlier but the girl would not go to her husband's house unless she was mature but now as soon as marriage take place the girl goes to the husbands house and consummation takes place soon after.

Q. Do you think unless there is marriage legislation the evil will not be prevented?

A. Yes. I think both marriage age and consummation age must be on par.

Q. If the evil is so great as you say then I understand that you will not care for any dissatisfaction.

A. I would not be dissatisfied with the legislation.

Q. Suppose there is great dissatisfaction in the country if the age is raised to 16, are you for ignoring that dissatisfaction in the interests of national welfare?

A. Personally I would be.

Q. You have said about the seduction of girls from Chhatisgarh. What is usually the age of those girls?



A. It is from 15 to 20.

Q. Are they widows or unmarried girls?

A. I have not come across any unmarried girls. In Chhatisgarh girls are married before 11.

Q. Do you mean they are very poor people and are therefore seduced?

A. They are not destitutes but they are illiterate classes.

Q. Do you think the evil is so great that some particular legislation is necessary for them?

A. Yes. The ordinary law is not sufficient to check this evil.

Q. Why is the evil not on the decrease?

A. Because it is so paying.

Q. You say the girls move freely and there is no purdah among them and there are cases of seduction and not of rape.

A. Yes.

Q. In fact it is very difficult to prove rape. When a girl is taken out of the custody of the lawful guardians then rape cannot be easily proved.

A. Yes.

Q. Is the evil of selling of girls rampant in Chhattisgarh?

A. I might say it is not rampant but cases may be found here and there.

Q. As regards these marital cases you want a marriage law. What punishment would you give to the parents of the boys and girls who may break the law?

A. In the beginning I would make the offence punishable very lightly.

Q. Say six months imprisonment?

A. Personally I would make it punishable with fine only.

Q. Would you only try it as an experiment?

A. As a corrective experiment or call it any way but I would like that such offences should be punished lightly with fine in the beginning.

Q. What is the population of Chhatisgarh District?

A. I do not know exactly.

Q. You say about 1,000 cases occur every year; The population must be very large then.

A. It is about 15 lacs.

Q. What is the caste of the residents there?

A. They are Brahmans and Kshatriyas.

Q. Do the girls who are seduced, belong to these castes?

A. Mostly they are from the working classes.

Q. So far as the Marwaris are concerned if you fix fine only don't you think they are likely to regard it as an item in marriage expenses?

A. I don't think any community fears fine more than the Marwaris because they think it is a blot.

Q. Do you realise that Marwaris regard imprisonment as much more terrible than fine?

A. They think fine is also a conviction.

Q. In Baroda State the experience has been that fine has not been successful as a preventive to early marriages.

A. There can be no limit to fine and it can be satisfactorily worked.

Q. What is the maximum punishment you would give in the way of fine?

A. It may be one lakh in the case of a man who is worth crores.

Q. Would you make the marital offences cognisable?

A. I have no decided opinion on that point. It is immaterial for me.

*Chairman:* It is material in this way—if it is made cognisable the police are on the scene and there is a great deal of trouble and harassment. Therefore some people are of opinion that it should not be cognisable and other people say unless it is made cognisable cases would not come to light.

A. I think the latter is more practicable.

*Mr. Mitra:* I understand you are for fixing the marriage age at 16 personally but considering all circumstances, you fix the age at 12 because you think the orthodox people will have very little objection.

A. Yes.

Q. May I tell you that the orthodox people think that the best age for marriage is between 8 and 10?

A. Most of the orthodox people do not marry their girls till 12.

Q. If you fix the age at 12 it will go against their scriptures. Are you prepared to make exemptions for them?

A. In that cases many people will apply for exemptions and the object of legislation will be annulled.

Q. Will it be in the discretion of the Magistrate to grant exemptions or not?

A. I would not provide any exemptions.

Q. Apart from religious cases would you provide exemptions for other hard cases for example an old man is about to die and he has no other relation and he wants to get his girl married? She has already attained the 14th or 15th year.

A. No, but I have suggested the age to be 12 and in that case I would not provide for any exemptions.

Q. If the age is fixed at 14 or 16 as you personally think, are you prepared to provide exemptions for specially hard cases and for orthodox people?

A. Yes.

Q. Sarda's Bill before the Assembly contemplates that the age should be 14. Are you ready to provide for exemptions in those cases on economic grounds that 2 girls may be married together?

A. If a law is passed I would not allow any religious objections.

Q. Don't you think there are people who rightly or wrongly think that they ought to marry their girls before puberty?

A. There are people who think like that.

Q. And you are not ready to provide exemptions for them if the age is fixed at 12.

A. For the common good of the country I would not.

*Mr. Shah Nawaz:* Have you reason to believe that most of the girls between the ages of 12 and 13 are consummated by their husbands if the wife and husband are brought together?

A. If the girl is 12 years old and if she is brought in contact with her husband and if her husband is a young man then the marriage is generally consummated.

Q. Have you reason to believe that most of the girls are consummated by their husbands soon after they arrive at the age of puberty say within one month?

A. That is a very difficult question to answer. Sometimes it takes six months after puberty for a girl to go to her husband's house. If she is living with her husband and she attains age and if she is allowed or made to go to the husband or if the husband is a grown up man, the marriage is consummated.

Q. Are you aware that the Shastras enjoin that the wife should be consummated within 16 days after the age of puberty?

A. I am not aware of it.

Q. Suppose you say we must fix the minimum age of marriage at 14 and the Age of Consent at 16, do you think we could prevent consummation by any means if the husband and wife are brought together?

A. We provide for many things but we cannot say that in each and every case our object is attained.

Q. You think it will be effective in many cases.

A. If there is a law many men will be prevented for fear of criminal courts. If the consummation law is at 16 and if the marriage is consummated at 13 there is a likelihood of a child being born and then even if the family hides it would become public.

Q. But how are you going to prevent consummation? Don't you think we should get rid of this religious belief and take courage in both hands and legislate for a law of marriage and fix the age at 14?

A. I think so.

Q. Would anybody agitate?

A. The orthodox people.

Q. What is their percentage?

A. I do not know.

Q. Will Marwaris agitate?

A. Some of them will agitate on the ground that prepuberty marriages are allowed by the Shastras.

Q. Supposing the minimum age of marriage is fixed at 14 and not at 12 as you suggest, do you think there is any risk of the girls going wrong?

A. Very little if at all.

Q. Considering the conditions in the villages, do you think there is any risk to them?

A. If a girl is kept till 14 years I do not think she will be kidnapped till that age.

Mr. Yakub: Do you think it is right for a Government, especially for a Foreign Government, to interfere in the domestic affairs of the people by means of legislation?

A. I don't think there is any harm.

Q. Have you any objection to it?

A. Personally I have no objection.

Q. If a law is made fixing an age for marriage, whom would you give the right of complaint for infringement of marriage law?

A. Crown.

Q. Do you mean the cases should be cognisable?

A. Yes, I have said that.

Q. Don't you think it will cause great annoyance to the public if police interferes in such cases?

A. There is no other way of enforcing the law.

Q. How would you ascertain the age of the girl?

A. By having a better record of births.

Q. Is the present system of recording births satisfactory?

A. In C. P. it is satisfactory but records are not kept forever.

Q. Are the names of the boys and girls given in the birth register?

A. No.

Q. How would you identify a particular boy or girl?

A. From the evidence of parents, neighbours and other contemporaries.

Q. Do you think parents who are accused in such cases would give evidence giving a correct age?

A. No. But the neighbours will be able to say that their child was born at the time when this child was born.

Q. You have been a judge, don't you think that such evidence can ever be believed?

A. It is believed and it is a very good evidence.

Q. Don't you think it will be better if supplementary entries were made in the register of births after the names are given?

A. Yes. Records may be made clear, perfect and supplementary report may be made giving the names.

Q. Would you like that marriages should also be registered?

A. In such cases they ought to be.

Q. To whom would you give the work of registering marriages?

A. It may be the village headman or the municipal committee or some public body.

Q. Who should be the reporter?

A. The parents or the neighbours.

Q. Whom would you make accused persons in the case of infringement of marriage law?

A. Parents of brides and bridegrooms both.

Q. Would you include mothers?

A. No.

Q. Don't you think that in case of marriage the will of the women has great weight?

A. Yes, it is but the men should resist it.

Q. Would you also make the priest and the pandit who perform the marriage accused?

A. I have not thought over it.

Q. Even if the priest knows that the girl is below age?

A. Even the gentlemen who are present on the marriage should be punished.

Q. But they are spectators.

A. There is very little difference between the priests and spectators.

Q. But family priest is the chief instrument in bringing about marriage and without him the marriage is not legal?

A. I have not thought over the question.

Q. Would you like cases of the infringement of consent law to be tried by such matrimonial courts or would you like that they might be tried by ordinary courts?

A. If special courts are constituted, it would be better.

Q. Matrimonial courts may be constituted of one judge and 2 non-officials acting as co-judges. Will such a court inspire more confidence?

A. I am not able to answer that question but I think it is better to have a special matrimonial court.

Mr. Mudaliyar: If a law were to be enacted either for marriage or for consummation who do you think enacts the law—is it the Foreign Government, or is it the legislature?

A. Legislature.

Q. And legislature is at present composed of 80 per cent. of the representatives of the people?

A. Yes.

Q. So it would be the representatives of the people that would be enacting the law and not the Foreign Government.

A. Yes.

Q. In what classes is early consummation prevalent among the educated or the non-educated?

A. Among all.

Q. Do you think it is prevalent more among the educated classes than among the uneducated classes?

A. I have not taken statistics.

Q. What I am driving at is your remark that anglicised ways are more responsible for early consummation.

A. I mean that marriage and consummation have become simultaneous whereas formerly it was not the idea that marriage should coincide with living of the husband and wife together.

Q. Is not this idea of consummation responsible for raising the age of marriage?

A. To some extent.

Q. I understand that you approve of the suggestion of Dr. Gour to separate marital and extra-marital cases.

A. Yes.

Q. Would you give them different names?

A. I would have no objection if different names are given.

Q. Are you keen that it should be taken out of the section of rape and marital offences should be given a different name?

A. Yes, I support it.

Q. Would you have marital cases tried in camera?

A. Yes. Even I would suggest that rape cases be tried in camera.

Q. Would you suggest marital offences being made compoundable with or without the sanction of the court?

A. In the first offence if it is made compoundable with the permission of the court, there is no harm.

Q. What do you suggest by first offence—after that, what will happen?

A. If the offence is repeated, it should not be compounded.

Mr. Kanhaiya Lal: You belong to the Marwari community.

A. I do not exactly belong to the Marwari community; I live on the borderland. I belong to the Agarwal community.

Q. Is it the custom among the Marwari community that after marriage the girl whatever her age is shut up in a room with the husband?

A. I have not seen it personally. I heard there is a custom that as soon as marriage is performed the girl is brought to the husband's house and she is sent to the husband's room the very first night.

Q. For how long have you been in judicial service?

A. For 23 years and 3 months.

Q. Have you got village panchayats in this part of the country?

A. There are a number of village panchayats in the province.

Q. Would you like to entrust cases of infringement of marriage law to those village panchayats?

A. At present there are no village panchayats everywhere and wherever they are, they are not looked after. Later on when they grow up I do not think there is any harm in sending such cases to them.

Q. As regards consummation of marriage—up to what age would you exempt the boy from punishment if he cohabits with his wife?

A. I think the parents should be punished and not the boy.

Q. Would you exempt the boy from punishment up to 14?

A. Up to the age of 18.

Q. Would you punish the husband's father and the bride and bridegroom?

A. Yes.

Q. Would you recommend that these marital cases should be enquired into only by gazetted officers of the police like Deputy Superintendent or Inspector of Police and by none less than that so as to obviate harassment to the people?

A. Yes.

Q. Would you recommend registration of marriages giving the names of the marrying parties and their ages?

A. Yes.

Q. Who should be the authority to register those marriages?

A. In municipal towns municipal committees and in villages kotwal should report.

Q. You recommend the same agency as it employed for registration of births and deaths?

A. Yes.

Q. Would you place the obligation on the parents or guardians to make a report?

A. Yes.

Q. And not on the priest?

A. There is no harm.

Q. Would you make it obligatory on the priest to make a report also?

A. It may be one of his duties but it should not be obligatory.

Q. Would you recommend that in these cases the registration department should be utilised, that is to say, registrars of marriages be paid by fees realised out of registration?

A. No.

Q. But the complaint is that the system is not working satisfactorily?

A. The reporting of births and deaths in my province though not perfect is nearly perfect.

Q. Would you recommend the grant of free marriage certificates to the marrying parties so that police may not harass them?

A. I do not see any necessity.

Q. That will be to protect them from police harassment?

A. You presume there will be police harassment. I think there will be no police harassment.

Q. Would you recommend the grant of a free birth certificate to the reporting individual so that he might keep it for use when needed?

A. If we can do that without incurring extra expenditure I think it is much better.

Q. Or if we provide money for it?

A. I do not mind.

Q. Do you think it will be helpful?

A. Yes.

Q. What should be the age of the boy for the purpose of marriage?

A. Nothing less than 18.

Mrs. Nehru: You say in your statement that cases of rape and seduction are increasing. What is the reason for it?

A. There is a great demand for girls in the Punjab.

Q. Is it Punjab only which is responsible for it?

A. Yes. I have referred to Chhatisgarh and lots of girls are being sent to Punjab. One girl was abducted, she was rescued and it was found that she was to be sold for 700. The man who abducted her was an educated man, but nothing happened. He was tried but he was acquitted. The girl was over 16.

Q. Have you been able to ascertain why there is more demand for girls in the Punjab now than before?

A. The male population is more than the female population. 22 lacs of men are without wives.

Q. Would you suggest any change in the procedure so as to make this extra-marital law more effective?

A. I cannot suggest anything. There is no defect in the law, the trouble lies in proving the facts.

**Written Statement, dated the 12th August 1928, of Mr. G. T. MESH-  
RAM, Vice-President, Civil Station Sub-Committee, Nagpur.**

(NOTE.—Except where it is clearly mentioned the information given below relates entirely to the Mahar Community.)

1. Yes. This is apparent from the resolutions passed at the women's meetings and conferences from time to time.

3. (i) Yes.

(ii) No.

The crimes of seduction and rape are frequent. The amendment of law in 1925 does not seem to have succeeded in preventing the cases of rape outside the marital state. Quite recently there have been two cases of seduction of such nature. The parents and relatives did not lodge complaints for fear of social ostracism and public shame.

(iii) In my opinion Vigilance Associations may be formed of gentlemen and ladies of good character and the individuals of such Associations may, by law, be authorised to lodge complaints for the crimes coming to their knowledge directly or indirectly. Such persons should also be exempted from civil and criminal proceedings against the complaints lodged by them. At present an offender knows that the parents of the girl wronged would not go to court, but if he realises that complaints could be made by others, the number of such offenders is bound to be reduced.

4. (1) No.

(2) Yes.

(3) No. An intensive propaganda in this direction has been carried on for some years past without any avail. Resolutions on this subject are, as a matter of course, passed in each and every conference. But they are only observed in their breach. It seems such practices could only be brought under control by an effective protection given to the married girls by the formation of the Women's Police Force and by compelling the *dais*, doctors and midwives, by law, to report cases of such nature when they come to their knowledge, in the course of their profession or otherwise, to the proper authorities as is the case for infectious diseases.

5. (1) Usually 12 to 13 years seems to be the age when girls attain puberty.

6. (1) Cohabitation before puberty, if not common, certainly does occur amongst the poorer classes of people.

(2—3) This is common. These cases never, or very seldom, go to court.

7. No. So far as my community is concerned the practice of consummation of marriage before or soon after puberty is not due to religious injunction, but, I think, is the result of early and child marriages in which we are apparently copying the other Hindu classes. The songs sung during the course of the marriage ceremonies depict the bride to be of 12 years of age and the bridegroom, 20 years. There is also a reference in a song to the consummation of the marriage where the wife says that after the marriage she has been in the husband's house for five years, therefore, she gladly consents to the proposals of the husband. This shows that in the past the cohabitation never took place till the husband and wife were of the ages of 25 and 17 years respectively.

Even now the old folks contemptuously speak of the present day generations and proudly say that their parents never used to allow the boy to see the face of the girl till he was over 25 years of age and she was over 17 years.

The Gond community also performs early marriages but the songs sung in their marriages by the opposing parties depict the bride and the bridegroom of well advanced ages and having experience of carnal intercourse.

This shows that the consummation of the marriage before or soon after puberty is not an ancient custom.

It may also be pointed out that child marriages are generally performed in the Berar and the Urban areas in Nagpur Division where the people are better off than in the rural areas where such things are rare, and consequently the consummation does not take place till a year or so after puberty.

8. (1) Yes. This is known as "Borwan".

(2) This generally coincides with the consummation of the marriage. But there are cases in which this is performed before the consummation of the marriage.

(3) It is generally performed soon after the attainment of puberty. There is a section of our caste known as "Ladwans" which performs this ceremony after the girl is found to be bearing.

10. I think 16 years. It is still doubtful to say whether girls of 16 will realise the consequences of their degradation and the spoiling of their whole life in the case of cohabitation with a stranger to give an intelligent consent.

11. Yes. I know the following cases:—

*Cohabitation before puberty.*

Serial No.	Approximate age of girl.	Result.
1	12	The first issue (now 11 years of age) is in weak health and has defective power of understanding; the mother (now of 3 children) is always in weak and indifferent health.
2	12	The mother suffered intensive pain at child-birth; the child is stout in body but defective intellectually.
3	11	This is a very recent case.

*Cohabitation after puberty.*

Serial No.	Approximate age of girl.	Result.
1	13	Two abortions.
2	13	Three children died very young; one surviving bodily in firm; mother died leaving a fourth child of about three months. The latter child died when about six months old.
3	12	First born child died; mother's health broken down.
4	13	Girl has become very weak and lean.
5	12	Gave birth prematurely in hospital (in the 7th month); one (gond girl) child was brought out dead and the other died soon after birth; the mother has gone mad and shouts day and night complaining of pain in the abdomen.

The following case was related to me this morning by a sweeper, of a sweeper boy having raped his girl-wife before puberty about 10 years back:—

Serial No.	Approximate age of girl.	Result.
1	11	Resulted injury in the body. Influenza epidemic being raging in the locality, the girl was not attended to and she died within six months of the marriage ceremony.

NOTE.—The "child" referred to above is the first child born of the cohabitation and "mother" is the girl raped.



12. Yes. The cases noted by me above clearly show that the early consummation and early maternity are responsible for maternal and infantile mortality and also for affecting the intellectual and physical progress of the people.

13. Yes. There is undoubtedly a progressive public opinion in favour of extension of the Age of Consent in marital and extra-marital cases. This is noticeable in the educated classes, and those of the poor classes who have come in contact with the educated classes.

14. Yes. Women do favour early consummation of marriage of their children, their only argument for this is the desire to see grandchildren before death.

20. No. I think penal legislation fixing the minimum age of marriage will be more effective than fixing a higher Age of Consent for marital cases. The public opinion in this part of the country would, however, resent the former as interference with their social liberties while they will be prepared to tolerate the latter in the interest of the society in general.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view aided with the progress of social reform by means of education and social propaganda. Without the help of the penal law the social reform has, so far, been able to do nothing.

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### Oral Evidence of Mr. G. T. MESHRAM, Vice-President, Civil Station Sub-Committee, Nagpur.

(Nagpur, 25th January 1929.)

Chairman: Are you Vice-President of the Civil Station Sub-Committee?

A. Yes.

Q. How long have you been connected with the municipality?

A. Four years.

Q. To what community do you belong?

A. Mahar community.

Q. You know a good deal about Mahars and their customs?

A. Yes.

Q. You have said that there are many cases of pre-puberty connections. Is that among the lower classes?

A. They are not many but they do occur.

Q. And before a girl is 13 years complete?

A. I think that is common, it may be after puberty but it is common.

Q. Among what classes is it common?

A. Mostly among Mahars but I do not know about others.

Q. Besides the Mahars is there any other community in which this custom prevails?

A. Yes; amongst the Gonds.

Q. Is there a very large population of Gonds here?

A. No.

Q. Are the Mahars a large population here?

A. Yes.

Q. Do you think the present law of the Age of Consent is known amongst the Mahars?

A. No; it is not known.

Q. You suggest that there should be law fixing the minimum age for marriage. Do you think that it would be more effective?

A. Yes.

Q. What age would you fix for the marriage of girls?

A. 14.

Q. What is the present age of marriage amongst the Mahars?

A. From before birth up to 13 or 14. There was a case in which the boy was two years of age. Another woman was carrying and the boy was married to the child in the womb with the idea that the child to be born would be a girl. But unfortunately the child was a boy, yet the marriage had already been performed.

Q. Do you think that if there were no law of marriage, and the Age of Consent is fixed higher than 13, the consent law would be effective?

A. I think it will be effective if every person is allowed to lodge complaints. It will not be effective without that.

Q. Do you think that amongst the Mahars there are a large number of cases of abduction and taking away of girls?

A. There are very few cases of the kind.

Q. Do you think that amongst the Mahars there is any risk of the girls going astray if they are kept unmarried till 14?

A. I do not think so.

Q. We are told that amongst the lower classes there would be danger?

A. I do not think there is any such danger.

Q. Have you any system of Gaona amongst you?

A. Yes; it is called Borwan here.

Q. Does it take place after puberty?

A. Many times it takes place before puberty also; but it has nothing to do with consummation of marriage. The meaning of the word is just a sending off of the girl, though the true meaning seems to be to send the girl after puberty.

Q. Can you tell us when the Mahar girls generally come of age?

A. Generally about 12. I have seen cases before 12 too. It is generally between 12 and 13.

*Dr. Beadon:* You say you have seen several cases of injury before puberty and injury after child-birth. Would you let us know what class of people were these?

A. I have said that they all belonged to the Mahar community.

Q. Were they poor girls?

A. Yes.

Q. Were there recent cases?

A. Yes.

Q. What is your opinion about the health of these children who are born to premature mothers?

A. Some are good. Some I found to be ailing.

Q. Do you think that it will be half and half?

A. Yes.

Q. Have you noticed the children develop as they grow up?

A. In some cases they develop bodily quite all right, but intellectually they are defective.

Q. Are a large proportion of them mentally defective?

A. No; only a few.

Q. Did all these cases happen within the last 5 years?

A. Some of them happened within the last 5 years; not all.

*Mrs. Nehru:* Is the population of Mahars very large here?

A. Yes. I think there will be about 30,000 of them in the city alone.

Q. In para. 7 you say that the Gond community performs early marriages, but the songs sung depict the bride and bridegroom.....as having experience of carnal intercourse. What do you mean?

A. I mean that the practice amongst them formerly was to have marriages at a well-advanced age. But the practice is now worse.

Q. You are for a law of marriage. If we cannot have a marriage law, the Age of Consent Law alone cannot be made effective. Do you still think that there should be a consent law even if there is no marriage law?

A. I think both the consent law and the marriage law should be fixed at 14.

Q. What punishment would you suggest for breaches of the marriage law?

A. I am not a lawyer, and I cannot suggest any.

Mr. Shah Nawaz: Don't you think that the orthodox people such as the Brahmins and the Vaishyas who observe pre-puberty marriages should be exempted from the operation of the marriage law?

A. I think the law should be made applicable to all.

Q. Do you think that if exemptions are granted in their cases, they will influence the Mahars and the Mahars will observe their customs?

A. Yes; if they are exempted, they will make the others copy them, and they will revert to the old system of marrying early.

Q. Do you mix with orthodox people?

A. No; I mix only with reformers.

Mr. Yakub: You say that illicit intercourse with wives below 13 do not come to light. What is the reason?

A. People are afraid of exposing themselves to the public.

Q. Do you think that if a woman police force is established, more of such cases will come to light?

A. No.

Q. Then why do you advocate the formation of such a force?

A. In the cases in which the girl has got to go to court there are chances of the girls being spoilt by the police themselves. I think this is not possible if the police happen to be women.

Q. Would you like to have women magistrates for the trial of marital cases?

A. No.

Q. Why not?

A. I am not afraid of male magistrates.

Q. Do you not think that women magistrates would be more suitable for ascertaining the sufferings to which these girl-wives are subjected than males?

A. Yes; that will be; but I do not think that female magistrates are necessary in trying these cases.

Q. Do you think it would be better if we have a matrimonial court to try such offences consisting of one stipendiary magistrate and one male judge and one female judge?

A. I consider that would be better. It would inspire better confidence.

Q. What in your opinion is the safe age for maternity?

A. I cannot say that.

Q. Is there much infant mortality in the towns here?

A. I cannot say about the towns, but it is very much in my community.

Q. What is it due to?

A. It is due to many causes one of which is early marriage.

Q. Is early mortality amongst women very high in your community?

A. Yes.

Q. Between what ages do more women generally die?

A. There have been many cases in which after the first or second child-birth women die. If they do not die then, then there is no sign of early death.

Q. Do you think that between the ages of 15 and 20 the rate of mortality in girls is higher than amongst men?

A. I do not know.

Q. Is the system of registration of births satisfactory in this town?

A. Formerly it was not satisfactory. But recently new columns have been added where the names of the children are entered. I think it is satisfactory now.

Q. How are they entered?

A. After the 12th or 13th day of the birth, the names of the children are ascertained and they are entered. The parents are required to go and report the names.

Q. Would you also like that there should be a similar system of registration of marriages?

A. Yes.

Q. Who should register the marriages?

A. I think the municipal authorities should do that.

Mr. Kanhaiya Lal: Have you come across cases of maternity in your community at the ages of 12, 13 or 14?

A. Yes.

Q. What ages?

A. After 12.

Q. Is it common or is it rare?

A. It is usual.

Q. At what age is it common?

A. Cohabitation usually starts at 11, and maternity is common at 13. In these cases there is injury to the girl and the progeny.

**Written Statement, dated the 23rd January 1929, Dr. R. K. MEHTA, Health Publicity Officer, Central Provinces, Nagpur.**

1. I take the general advance in the marriageable ages of boys and girls and the attitude of all intelligent opinion in favour of such advance as evidence of dissatisfaction with the present state of the law as to the Age of Consent.

2. Educated public opinion is gaining ground from day to day which is favourable to the making of an advance on the present law.

3. I do not think such crimes are frequent in this Province. The raising of the Age of Consent to 14 years has not had any effect on the number of such offences. Spread of education and general enlightenment are the only measures that I can suggest.

4. The amendment of 1925 has not been effective in protecting married girls either by postponing the consummation of marriage or by stimulating public opinion in that matter but slightly by putting off marriage beyond 13 which is due more to the improving public opinion than to the amendment in question. Propaganda on matters of enquiries would be of considerable help.

5. About the age of 13 years not very much. It depends more or less on individual constitution.

6. I claim no particular knowledge on the subject but among the educated classes cohabitation before puberty is never heard of.

Some of them do come up as cases of rape or indecent assault.

7. I know of no such religious injunction enjoined.

8. This religious coremony is more or less becoming obsolete oxecept perhaps in the more conservative element of tho highest castes. It is interior to the consummation of marriage and is generally performed after the attainment of puberty, but among certain classes of people Gaona (I mean sending off a married girl to her husband's house) is performed before puberty but sensible parents take caro that marriage is not consummated till after puberty.

9. No. Normally I would put the age of consummation at 18 years or nearly five years after puberty.

10. I would consider a girl in India to be incompetent to give an intelligent consent to cohabitation till she has attained the age of 18.

11. Yes, I have had cases in my experience of the injurious results of early cohabitation.

12. Yes.

13. Yes. The educated public opinion has advanced since 1925 but no attempt seems to have been made on a large scale to advance the general opinion of tho masses.

14. No.

15. I have had very little to do with medico-legal work but difficulties are experienced on account of the Age of Consent being low.

16. The margin of error would certainly be reduced if the Age of Consent be raised to 16 or above.

17. Looking to the present state of society, the offences should be classed separately. Tho punishments provided are quite adequate but I would amend the exception to section 375 by substituting "14 years" for "13 years" and section 376A by substituting "16 years" for "14 years".

18—19. I have no opinion to offer.

20. For the mass of the population it is more expedient to legislate with respect to the Age of Consent than with respect to the minimum marital age but it may be possible to introduce compulsory registration of marriage and to fix minimum age of marriage in big cities and township areas where public opinion is more likely to favour this reform.

21. I would rely on all the three processes at the same time much can be done by special lantern lectures and cinema shows on questions of eugenics and marriage reform.

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### Oral Evidence of Dr. R. K. MEHTA, Health Publicity Officer, Central Provinces, Nagpur.

(Nagpur, 25th January 1929.)

*Chairman:* What is the system of registration of births here?

A. The Kotwar sends reports to the police and they register them.

Q. Do you think it is satisfactory?

A. It is very unsatisfactory.

Q. Can you suggest any method of improving it?

A. The only thing that I can say is that these Kotwars would do it better if they are given better emoluments.

Q. Have you any complaints to make with regard to the registration of births?

A. About the reporting of births there is no complaint, but sometimes births are not reported, but not very often.

*Mr. Kanhaiya Lal:* How long have you been working in the Health Department?

A. Since 1923.

Q. Before that?

A. I was in the Medical Department in Betul and other places as Assistant Surgeon.

Q. When did you begin medical practice?

A. I joined in 1916. I have 7 years of medical practice and been 5 years in the Health Department.

Q. In your practice do you come across cases of maternity at 12 or 13?

A. Not much at 12 or 13.

Q. At what ages have you come across cases of maternity?

A. 15 and above.

Q. Do these labour cases generally go to lady doctors?

A. Formerly there were no lady doctors. So they used to go to the general hospitals, and those who did not like to go to the hospitals used to call the Dais to their houses.

Q. From what communities do the cases go to the hospitals?

A. Both from the higher and lower classes. There were Anglo-Indians also.

Q. Did you find evil results following early maternity at 15 or 16? For instance, was there devitalisation of the constitution, etc.?

A. I think early consummation and early child-birth do harm both to the mother and the progeny.

Q. Have you seen cases?

A. I have seen cases where the injury sustained by the mother was pretty serious. To give you a concrete instance, I saw the daughter of a very rich man married at 10. There was maternity between 14 and 15. I did not attend the case personally, but attended her after the illness. She bore two children succeeding at an interval of 1½ years. Her health was broken down and she died at 20 or 21 from tuberculosis. In fact she was a lady living in bungalows and other good surroundings.

Q. Was it devitalisation owing to early consummation and frequent child-births?

A. I think frequent child-birth is another result of early consummation. I think it adds to the debility.

*Mr. Bhargava:* Do you think that there is greater liability to frequent child-births if there is early consummation?

A. No; I mean that if a girl is consummated early in life she will have a larger number of children.

*Mr. Kanhaiya Lal:* Do you consider frequent child-births as one of the evils resulting from early consummation?

A. Yes.

Q. What is the safe age that you would recommend for marriage?

A. 16. For consummation I have put down 18, but allowing for all the circumstances I do not think 18 is really the age. I think it should be 20 or above 20.

Q. In what communities have you noticed early marriages to be very common?

A. It is common amongst almost all communities.

Q. Between what ages is it common?

A. Between 10 and 12. I am talking of distributed cases.

Q. Is it more common amongst the lower classes?

A. Yes.

Q. Do you think people will accept 16 as the age of marriage?

A. It may be that it will not be accepted at once. It will be accepted gradually.

Q. With what age can be begun?

A. We can begin with 16 straightway.

Q. Do you not think there will be opposition from people who practise marriages between 10 and 12?

A. You will have the support of the educated people. Amongst the lower classes we will have to do some propaganda and teach them.

Q. Meanwhile do you not think that hundreds of prosecutions will go on?

A. I think it is a matter of administration whether the prosecution should be severe or otherwise in such cases.

Q. Would you recommend the passing and enforcing of the law in spite of resentment and opposition?

A. Yes.

Q. Do you remember any other cases in which there has been injury?

A. In the one case I mentioned, the woman died 5 or 6 years ago. In another case, the lady is living. She was married at 12 and gave birth to a child at about 15. She then had a mother four or five children. She is now in a rickety condition of health; and she has got dyspepsia also. I see a number of such cases at the time of the Baby Weeks.

Q. Do you think babies born to mothers at 13 or 14 are below the normal weight as compared with babies of elderly mothers?

A. Yes; and they are puny in size too.

Mr. Bhargava: Do you think that education is greater in the towns than in the villages?

A. Yes.

Q. You say that in villages even if there is dissatisfaction you are in favour of a law fixing a minimum age of marriage.

A. Yes.

Q. Then why do you confine legislation regarding the age of marriage to towns and the Age of Consent to villages?

A. I have suggested the introduction of the law of minimum age of marriage in towns because it will be very difficult to have a law enforced in the villages, whereas it will be more easy in the urban areas. This will itself be a propaganda, and the rural population will follow the urban population.

Q. You have suggested that the administration of the law should be in the hands of the executive. So that the registration of births in the villages being not very accurate, do you not think that the law might be enforced leniently?

A. It is a matter of administration, and I think you can have a general law both for the villages and the towns and deal with cases in the way you like.

Q. You say that some propaganda in this direction should be done. Are you doing any propaganda now?

A. Not so far as eugenics are concerned.

Q. Does the Government provide funds for the purpose?

A. No.

Q. Are you then in favour of Government providing funds for propaganda in this direction?

A. Yes.

Q. How would you spend the money?

A. We would prepare films and demonstrate them. We would take girls married late, and photograph them and their children, and explain the evils of early marriages both on the mother and the progeny.

Q. Do you think that the evil is so great that the Government should appoint officers for each district?

A. I think it will be very expensive at present. I do not think Government will be able to bear the expenses. But the sooner it is started the better.

**Written Statement, dated the 26th January 1929, of Dr. (Miss) N. R. MUCADAM, W.M.S., Honorary Secretary, Countess of Dufferin Fund, Nagpur Branch, and Medical Officer-in-charge, Daga Memorial Hospital, Nagpur.**

1. Yes, the general feeling is that if there is to be any law at all then the age-limit should be increased.

2. Certainly. An advance on the present law is necessary.

3. I cannot give any opinion.

4. No. It has had absolutely no effect because it is my observation that amongst castes in whom early marriages prevail husband and wife freely cohabit even before puberty or before the girl attains a particular age. Partics have no fear of law because the family protect them well.

(1) There should be no marital offence.

(2) Stimulating public opinion in that direction, is good on paper only; if at all it has any effect, it will take ages.

(3) If we want to improve the present state, the marriage age must be put off and regulated by law.

5. In Hindus and Mahomedans the puberty is arrived at between 12 and 14.

It is late among Parsees and Anglo-Indians—13 to 16. Puberty depends upon climate and also upon bringing up of children and the mode of living. It is early in girls who are brought up in unhygienic surroundings and having a common dwelling apartment and hearing old ladies talk on sexual matters.

It is late in those whose mode of living is more refined and girls are brought up under discipline and moving in better educated society.

6. Yes. More common is uneducated classes of children where the girls are neither educated nor looked after.

(1) Yes. Some.

(2) Yes. Many.

(3) Yes. These cases are not likely to go to court.

7. We are always made to understand by ignorant class of people that it is "Dharma" but I know nothing about it.

8. I know that "Otabharan" or "Garbhadan" ceremony is performed soon after the girl attains puberty in uneducated depressed classes and never before puberty. I do not know about this custom in educated class or better class of Hindus.

9. No. How long after puberty I cannot say. Age is the best guide. If I have my own way, I would like to have 18 but taking in the circumstances at the present day, it would be wiser to take steps gradually and begin with 16 and eventually go to 18.

10. At least 16 complete.



11. Yes. We see such cases almost daily in hospital. Girls come for delivery who are not matured and measurements being small, difficult labour is the result. If normal labour is possible, the new-born infant is under-weighted. Those infants have less chances of surviving one year of age. The most curious part is that the girls do not come to us for immediate injury and soreness. I have investigated the cause. I understand therefrom that there are two reasons—one is mal-practice on the part of mothers and improper fondling from very childhood—and, secondly, girls are not brought for treatment because the general belief is that they must suffer and every one of them must undergo pain and they have their own extrigent drugs to treat with. But many young women come with consequences of pregnancy such as prolapse and tears and when you take the history one finds out that the cause was, she had become mother when she was a mere girl, this being the result, I certainly do believe that the child-mother gives birth to very feeble children in body and mind because the mothers' own body and mind are underdeveloped or any way has not reach the maturity.

12. The part of infant and child mortality is responsible for early consummation and its consequences. I certainly believe that it does affect the intellectual or physical progress of the people.

13. The general public opinion in rich and poor, in uneducated and educated is in favour of raising the age, specially where the custom prevails, that a girl should become a mother as soon as possible, and when after effects and consequences of early marriage and complication of early motherhood make them suffer, they all feel that the custom and prevailing system is very wrong and something should be done to save them from the life-long misery which has taken in a root in their younger days of life, and they one and all feel and sincerely wish that they were not married early. This feeling gives us enough ground to put it in black and white that the general opinion is to raise the age of marriage.

14. Practically no. The early marriage is practised because in their caste they will be discussed unfavourably so far as their daughters are concerned and hence they hurry up to marry them as soon as they possibly could. Some have belief that their religion compelled them to do so. But how far they are right or wrong so far as their religion is concerned, I am not able to say. But apart from above two grounds the early consummation of marriages for their children is not favoured except in houses where there is a lot of money and where they are in desperate hurry to get a heir to the property, or in families where an old grand-mother's word is law, where she has her own way and girl's parents have no hand in the matter.

15. Yes. Because medical men and women cannot speak about the exact age to a day and hence the only proper remedy is to keep proper registers of birth.

16. Yes, the difficulty or margin of error in determining the age would be materially reduced or minimised if the age is raised from 14 to 16 or 18, because 14 is the age when a change in girl takes place from girlhood to womanhood and it is just on border line and hence the difficulty is great to give opinion one way or other. But if it is 16 and preferably 18 it is easier to speak about the age with some certainty practically.

17. I am not in favour of creating marital offences at all. I would like to have only age of marriage offences meaning 16 or 18.

18—19. I cannot say.

20. Fixing the age of marriage would be more effective and more practical than any other means.

21. About the penal law, I cannot say; social and educational reforms are uncertain. The proper remedy is to raise the marriageable age limit from 14 to 16 or 18.

**Oral Evidence of Dr. (Miss) N. R. MUCADAM, W.M.S., Lady Superintendent-in-charge, the Daga Memorial Hospital, Nagpur.**

(Nagpur, 25th January 1929.)

*Chairman:* Are you in charge of the Daga Memorial Hospital otherwise referred to as the old Dufferin Hospital?

A. Yes.

Q. How long have you been in charge of the Hospital?

A. 4 years complete.

Q. Where were you before?

A. My first appointment was in Akola. I was then in Cawnpore and Allahabad.

Q. How long were you in these places?

A. I was in Akola for 9 months, Cawnpore 4 months and in Allahabad 10 months. I have been in Nagpur for the last 4 years.

Q. Have you got a lying-in ward in your hospital?

A. Yes.

Q. Do you keep any register of the age of the mothers?

A. We do not keep any regular register. But we always take down the age of the mother when they come.

Q. Have you had cases of child-mothers of 14 coming for confinement?

A. Yes.

Q. Are these very common?

A. Not very common, but we do get such cases.

Q. Have you reason to suppose that there are many cases that do not come to the hospitals?

A. Yes; I have reason to believe so. Difficult cases come to the hospitals, and a little bit educated people bring cases. But in Nagpur there are a few Hindu communities who have got an idea that if they go to the hospitals they get polluted, and that they have to give caste dinners.

Q. Amongst what class of people do you get girl-mothers?

A. Hindus generally, I once got a girl of a better class. But the rest of them come from the illiterate class.

Q. Do you get mothers of 14 and 15?

A. Yes.

Q. How many cases in a year do you think you will get of mothers below 14 or 15?

A. I cannot say that off-hand.

Q. Are these cases rare, or are they plenty?

A. Not quite rare or quite plenty. But they are a fairly good number.

Q. Can you tell us the conditions of these girl-mothers and their infants as a result of early maternity? You seem to suggest that they suffer worse than girl-mothers at 17 or 18.

A. First of all when these girls come to me they have always a great anxiety that they will not deliver naturally. Their bones are not generally properly developed, and the pelvic girdle is not formed. And we find that very seldom they deliver naturally. Most of these cases are cases of instrumental and surgical delivery. Sometimes they deliver naturally, not because they are fit, but because the infant is very small. The infant is puny and small and there is very little chance of its survival. The breasts of the mother are not developed, and she does not get enough nourishment.

Q. In the case of these child-mothers would you make a general statement that the apprehension with regard to safe delivery is greater than in elderly girls?

A. Yes. First of all the risk of the mother's life is great. The child is either born dead, or if born alive, it has very few chances of survival.

Q. In these cases can you compare mentally the cases of primiparas at 17 or 18 and can you say that they have got a distinct advantage?

A. Yes; there is no doubt about it. Primiparas of 17 and 18 are much better. I do not generally find any difficulty in their case. They are also able to look after their children better.

Q. What do you think is the proper age at which a girl can give intelligent consent to sexual intercourse with a due realisation of the consequences?

A. Not before 16.

Q. Do you think that a girl becomes fit to be a mother soon after she attains puberty?

A. No. Certainly not.

Q. What period do you think should elapse between puberty and consummation?

A. My idea is that it should be 18. But taking into consideration the local conditions and the general condition of India, I think, to begin with it can be 16.

Dr. Beadon: Have you had any occasion to speak to ladies about the age of marriage or the Age of Consent?

A. We speak to them when we see the child-mothers. The reply is that they all feel that it is early and that it should be higher. But they say that it is either custom or family pressure. A grandmother wants a grandson in the house. The girls themselves feel for their having been mother early.

Q. Do you think that the ladies would like to have a law preventing marriages before a certain age?

A. I have not spoken to them about the law, but I think if there is a law fixing the age at 16, they would certainly be happy.

Q. You might have seen a number of early mothers. Have you seen any cases in which there has been injury to the mother?

A. We do not come across many cases of injury; but we come across cases where they actually suffer from something or another. The injuries do not generally come to us in time. Supposing there is injury, nobody thinks of it, or they treat it at home. Even sometimes when they are infected with venereal diseases the children get frightened, but they dare not utter it to anybody.

Mrs. Nehru: What was the age of the youngest mother you met?

A. I think it would be 13 or 14. The girl came to me for delivery, but she did not look more than 12. They said she was 13 or 14.

Q. Did she come to you for confinement?

A. Yes.

Q. Do you find that severe injuries follow the confinements of these young mothers?

A. I was just recollecting cases this morning. There were a couple of girls who were delivered in the villages and the whole thing was ruptured, and there was prolapse. They were very young girls.

Q. What about the children in these cases?

A. The chances of their survival are bad.

Q. Have you found them intellectually weak also?

A. Intellectually they are not as good.

Q. Did the youngest mother of 13 belong to Nagpur?

A. Yes.

Q. Do you get more of young mothers in Nagpur than in other places?

A. My idea is that it would be more in United Provinces and Calcutta. I got my Bombay Degree ten years ago. I was in Gaya, Delhi and Nagpur.

Q. Have you noticed any difference in the age of puberty in different places?

A. Yes. The age of puberty is very early in classes where the children are brought up precariously. There are the educated classes where you know the girls are brought up like children up to the age of 14 and there the puberty is very late and if you compare the Parsis and Christians with the Hindus and Muhammadans, you will find that the age of puberty amongst the Hindus and Muhammadans is at a very early age than amongst the Parsis and Christians. I mean to say that mode of life and the mental factor do work as an important factor.

Q. That means in villages puberty ought to come earlier than in towns. Is it not?

A. Not necessarily. But in villages they have got the advantages of open air whereas in the towns in one room the whole family has to live.

Q. Have you noticed any difference in the age of puberty amongst the early marrying people, for instance, the Brahmins and others?

A. No.

Q. Is it a fact that children born of young mothers are necessarily weak?

A. It all depends upon the way in which they lead their lives. For instance, I have got in the hospital a girl. She is now 19. She had her first baby at 15 and she has now a second child and both the babies are beautiful babies. But I cannot compare this girl with other girls because this girl has plenty to eat and has every comfort. When the girls have got to work in the houses, cook food and work in the mills for their own maintenance, then they suffer.

Q. Then according to you early maternity is not injurious?

A. Physically it is bad when a girl becomes a mother at 13 or at 14.

Q. It has been suggested that the mere fact of getting a child after puberty is not injurious either to the mother or to the child. Do you confirm this view?

A. I disagree with this view because at this time the girl is not developed, her brain is not developed and her bones are not developed.

Mr. Bhargava: If climate has got an effect, then in Calcutta, United Provinces or Nagpur, the period of puberty must be different. Is it not?

A. I suppose in Calcutta and in Madras puberty comes on earlier than, say, in Punjab, because though Punjab is a hot place, still it has got a beautiful winter for three or four months and so the climate has got a greater effect.

Q. Then it follows that a girl at 16 is quite safe during maternity and her progeny is also quite safe. Is it not?

A. A girl at 13 or 14 will certainly suffer. At 16 or 17 she is comparatively safe but if maternity comes at 19 she is absolutely safe.

Q. If there is a difference of one or two years in the age of puberty will not the age of maternity differ according to you?

A. Here the question is different. I don't make any relations between puberty and child-birth. I fix 18 for the general development of the girl and as the proper age for child-bearing.

Mr. Mitra: Can you tell us from your experience if in the families where early marriages are practised, the girls attain puberty earlier? Is there anything hereditary?

A. If you call it hereditary and think of one family then it arises in this way. Among Anglo-Indians and Parsis and even domiciled Europeans, the girls arrive at the age of puberty later though in tropical countries they may arrive at the age of puberty earlier. So I cannot call this a hereditary

disease. It goes with the climatic conditions, the mode of living and the environments, etc.

Q. Do you mean to say that a healthy girl attains her age later?

A. I mean by a healthy girl, a girl who is physically developed. Suppose you take the depressed class girls and bring them up in a different way, perhaps they may not be strong but their children will be very strong. Their mode of life, their mentality and everything changes.

Q. So in fact for girls who attain puberty earlier, should not a longer period elapse before consummation takes place than for other girls who attain puberty later?

A. I don't fix up the period. I go by the health and the age. I say that a girl is better fit to become a mother at the age of 19 whether she arrives at the age of puberty at 11 or 16. As a matter of fact, if a girl arrives at the age of puberty at 11, she should be given a better chance.

Q. Do you think that 18 or 19 is the ideal age for motherhood?

A. Yes.

Q. For extra-marital cases you have fixed the age at 16. Will they not understand the consequences better if you raise the age to 18?

A. Yes, certainly. I put 16 as the least age but I have no objection if you raise it to 18.

Mr. Shah Nawaz: Don't you think that a girl-wife at 13 or 14 hasn't got sufficient milk to feed her baby?

A. If the constitution is weak this happens. If the milk is scanty, I must say it is due to the mother having not got sufficient food to eat.

Q. Supposing in the case of a girl who is aged 12 or 13 if menstruation is started, would not that have a weakening effect?

A. Yes.

Q. And if she becomes pregnant, it will be very difficult for her to bear the child. Is it not?

A. Yes.

Mr. Kanhaiya Lal: Do you keep a register of labour cases? If so, will you send a return of early cases, describing the nature of labour, weight of baby, etc.?

A. Yes, I shall send you this information.

### Written Statement of Mrs. BIVALKAR, Health Visitor and Midwife, Sitabaldi, Nagpur.

1. There is dissatisfaction amongst the educated few; the masses hardly know the present law and there can be no general dissatisfaction.

2. The Age of Consent, if it stood by itself, should not be less than 16.

There are many reasons for an advance—

(1) A new consciousness amongst women in India for emancipation of their sex.

(2) Physical degeneration of mothers and infants.

(3) Opportunity for girls to enjoy girlhood and prepare educational, and otherwise for wifehood and motherhood.

(4) Capacity to select their own husbands.

3. I cannot answer part first of the question. The raising of age merely will only prevent girls between 14 and the advanced age (say 16) being seduced. Consent of a girl is not usually pleaded in such cases as we read in papers.

4. (1—3) No. The law by itself cannot be effective in marital cases. It may prevent unions of Devdasis, Murlis, dedicated to God, and girls of prostitutes below a given age.

5. Between 12 and 14. Better fed girls are prone to have early menses.

6. (1) No.

(2) Yes.

(3) Sometimes; but these cases cannot come to court and never will.

7. Orthodox think that Hindu Shastras require Brahmins and two lower classes to have pre-puberty marriages. Custom and social opinion are the real factors which regulate their practice.

8. Garbhadan is done among Brahmins within six to twelve months after first menses.

9. No. I should say 16 would be a good age.

10. Sixteen.

11. As health visitor and trained midwife I know of many such cases.

12. I strongly believe it is the chief cause of mothers and children dying and of the physical degeneration. I have not seen mental capacity affected by early births.

13. Women in this part think the age should be raised to 16 for consent and also for marriage.

14. Ignorant women, who are the majority, want children early not realizing the evil effects.

15—19. I cannot answer these questions.

20. Women here distinctly want marriage age fixed at 16 if possible and consider Age of Consent Law as futile. The law if enacted would be obeyed though resented for a time.

21. I rely on both.

I am strongly of the opinion that marriages before sixteen may be prevented by law. It will go easier to detect offenders if such a law is passed. Offences under the Age of Consent Law (as far as the married girls are concerned) will hardly come before a Court.

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### Oral Evidence of Mrs. BIVALKAR, Health Visitor and Midwife, Nagpur.

(Nagpur, 25th January 1929.)

*Dr. Beadon:* Have you come across any cases where serious injury has resulted from early cohabitation?

A. Yes, some of them go limping and in some of them the development is arrested.

Q. Have you seen girl-mothers at the age of 13 or 14?

A. Yes, I have seen many mothers.

Q. Have you seen the children of these young mothers?

A. Yes, I have seen the children of these young mothers. Generally they are very small and weigh only 3½ lbs. When the children are very small the delivery can be passed through easily but the difficulties arise when the children are big. The children of these young mothers sometimes die. I haven't seen any such mothers dying but I have seen the children dying.

*Mrs. Nehru:* How long have you been working?

A. I have been working for the last 25 years both in Nagpur and Amraoti.

Q. Do you see mothers more of 16 or 17 or of 13 and 14?

A. Formerly I used to see girl-mothers of 13 or 14 but now I see girl-mothers of 16 or 17.

Q. Are the children of these girls healthy?

A. Some of them are good and some of them are not. They don't seem to be strong. Neither they are strong nor are they weak.

Q. Have you seen the later children born to the same mother?

A. No. I have not seen their later children but I have seen that there is abortion, miscarriage and so on and sterility has in some cases resulted.

Q. Some say that girls attain puberty now later than before. What is your experience?

A. Formerly the age of puberty was 12 or 13 but now it is 13 or 14.

Q. Have you been working in the villages?

A. Yes.

Q. Do you find any change in the villages?

A. I find the women are strong in villages and their children also are strong.

Q. Do you mean to say that in villages consummation takes place late?

A. Marriages take place early but consummations take place late.

Mr. *Kanhaiya Lal*: Amongst what classes of people do early marriages take place?

A. Amongst the Brahmins it does not take place so early now but amongst the Vaishyas early marriages take place.

Q. What is the usual age of marriage amongst the Vaishyas?

A. From 4 to 9.

Q. What is the usual age of marriage amongst the lower classes?

A. From 2 to 9.

Q. Does Gaona take place after puberty in all these classes?

A. Yes.

Q. You have suggested 16 to be fixed as the minimum age of marriage. Do you think it will be accepted by all and will there not be opposition from the orthodox people?

A. We must have propaganda work. If people are taught about the evils of early marriage and early maternity and so on, I am sure they will listen to 16 being fixed for marriage.

Q. But until propaganda work can be done to the right end, will you agree if we start with 14 for marriage as a first step?

A. If you take into consideration the health of a girl for her becoming a mother, it must be at least 16.

Q. The village people say that they cannot look after unmarried girls till 16. So, will you have 14 as a first step?

A. If they can support the girls till 14, why cannot they support and look after them till they are 16.

### Written Statement of Mr. R. M. DESHMUKH, Bar.-at-Law, M.L.C., Nagpur.

There are two distinct standpoints, viz., that of the mass of the people based on custom and that of the educated based on the consideration of what is desirable. If we speak in the name of the former no justification for any change exists, nay what has already been done is against the spirit of their customs. Nevertheless I feel we are justified in setting up our laws of the land more on the considerations of what is desirable than otherwise.

1. No dissatisfaction seems to exist if the population is considered as a whole.

2. In the case of marital relations the advance in age should be cautious. We do not wish the marriage as an institution to slacken its grip on the people. Late marriages tend to develop a dislike for it, and to give rise to a population of unmarried people; a state which is not a natural state

for a social animal like the human being. I should not object to setting up a minimum limit before which girls shall not be married, the parents of the girl being penalised for any such occurrence being allowed, as well as the abettors of it. Further restrictions would in all probability be unenforceable but a cautious provision contemplated by Section 376-A, would be useful as a discouragement. It should not be forgotten that a state of being married is the only sure protection sometimes in the conditions obtaining in villages and to a lesser yet a considerable extent in towns against the temptations of life for girls from many classes.

About extra-marital relations the case is quite different. I agree that the age of consent for these be placed at 16 or even higher. Nobody has a right to be a mother or a father unless he or she takes the responsibility of tending to the offspring. A child is entitled to the care of both the parties responsible for its birth. Our law about adultery needs to be made more comprehensive. A connection with a girl over 16, when the age is raised, even if it be with her consent should be punishable. So also in the case of a married woman the consent or connivance of the husband should not be valid defence for the crime. !

Other considerations which make it desirable to raise the age in marital as well as non-marital relations are that mothers to be should be able to understand and discharge their duties towards the child; it is equally important that physically they should be able to bear the strain of motherhood and child-bearing. !

For all these reasons an attempt at raising the age is necessary.

3. Judging from the Government reports these crimes are not very numerous; but my feeling is that at least the crime of seduction is more common than the reports show. I am afraid none of the virtues set out in the question can be claimed for the changes of 1925. It has hardly yet reached the people and has not really been in force long enough to affect matters. I propose that the law should be amended as above; that prostitution be definitely recognised and supervised; that prostitutes be licensed and be required to keep registers; that the law as amended be brought to the notice of the people by means of leaflets freely distributed amongst the people at least once a year for five years with an appeal to help the police in this matter; that police be instructed to use their power so as not to let this develop into an instrument of harassment.

4. I should not think so. There is really no effective way for this. We should keep the law as an indicator of the direction in which the opinion should grow. Matters will tend ultimately to adjust themselves to the position thus indicated.

5. 12 to 13. There is not much difference between classes.

6. Soon after puberty is the rule dictated by the custom. In its operation it is possible that cases of type (3) do occur, but they cannot be expected to come to court under the present state of the Hindu society.

7. I have not searched for the authority for the simple reason that people follow the practice as a result of the custom in existence and not as an injunction from any law-giver.

8. Yes. It must be anterior to the consummation, and by custom should follow within the first 16 days after the attainment of puberty.

10. I do not know but certainly not when she is 16 or even 18.

13. Such a thing if at all can be said about the most advanced classes of believers in social reform by legislation.

14. Generally. Yes.

15. There should be a presumption that an unmarried girl is below 16; the accused in order to mitigate the intensity of his crime should prove otherwise, in which case he will be punished for adultery for which punishment lighter than for rape should be prescribed.



20. Fixation of the minimum age would have more effect. Neither of the alternatives would be really in consonance the prevalent public opinion.

21. I would rely on both. I would fix the position where the limit of the law would be transgressed, and let the law help the reformer in his beneficial work. Please see reply to Question 4.

### Oral Evidence of Mr. R. M. DESHMUKH, M.L.C., Craddock Town, Nagpur.

(Nagpur, 26th January 1929.)

*Chairman:* Were you a Minister in the present Council for a few years?

A. Yes.

Q. Have you any reason to believe that in the Maharatta community or in any other community the present law of the age of consent at 13 is broken, i.e., consummation of marriages takes place before a girl completes her thirteenth year?

A. As a rule. Not.

Q. You think that there are exceptional cases where it is broken. Is it not?

A. Yes.

Q. Do you know of the conditions amongst the mahars and the depressed classes about this matter as to whether the age of consent law is or is not broken or would you confine your remarks to the Mahratta community only?

A. I would certainly speak more on behalf of the Mahratta community than on behalf of the mahars and others.

Q. What is the usual age of marriage amongst the village people and amongst the Maharatta living in the towns?

A. The usual age of marriage in the rural area is certainly below 10 in towns the people have an idea that the marriageable age should be higher and it is gradually being increased.

Q. Do you know of any Mahratta families who marry their girls late after 16?

A. I know none.

Q. Do you think that there is a large number of girl mothers below 16?

A. Yes.

Q. You have not given any answer to Question Nos. 11 and 12. This is not necessarily a professional question. I would like you to give me some experience of girl mothers at 13, 14 or 15.

A. I should say that cohabitation before puberty is not existent in this part of the country but the want of physical development is fairly common in many girls.

Q. Does this result in injury to the girl or to her progeny?

A. I have seen that some of these young mothers have succumbed because motherhood came on them very early.

Q. Could you give us particulars of one or two instances?

A. In my own family there were two instances. In one case there was the death of the girl and in the other case there was the mental breakdown of the girl. The child that was born to the girl who died is very healthy and in the other case the mother had serious illness and finally she survived.

*Dr. Beadon:* Did these happen within the last five years?

A. These happened very recently. !

*Chairman:* You seem to think that the fixing of the minimum age of marriage would be more effective than the age of consent.

A. Yes.

Q. Do you think that if the law of the age of consent stood by itself without any law of marriage, it would protect the girls any better from early maternity?

A. No.

Q. Why do you think that no protection will be afforded to the girls by merely raising the age of consent?

A. I consider that as a rule under the conditions in which we live we could not get anybody either from the members of the girl's family or the members of the boy to complain or even an outsider to complain.

Q. You think that there are inherent difficulties in the situation.

A. Yes.

Q. You seem to want a cautious advance. What age do you suggest for fixing the minimum age of marriage?

A. I would fix 14 as the minimum age of marriage. When I say that a cautious advance should be made, I mean that in the earlier stages there must be or there would be many marriages probably in spite of the law and whatever penalty we impose on either the parents of the girl or the boy or on the abettors, the marriages must exist and they would exist. Therefore in the case of a marriage which takes place in spite of the law before 14, I say that there should be a lesser punishment for the husband. There should be some kind of punishment which I think will deter some people from actually entering upon the married life.

Q. But if we fix the marriageable age at 14, are not the chances very few of marriages will taking place before 14 in spite of the law?

A. I should not think so.

Q. Out of ignorance there may be some and they might be dealt with very leniently.

A. I am afraid that in the earlier stages at least there would be many.

Q. What do you suggest with regard to those? Do you mean that the punishment prescribed should be less?

A. Yes, the punishment prescribed should be less for those cases.

Q. Do you want any minimum age for boys just as you say 14 for girls?

A. I think that the minimum age fixed for girls would naturally result in a higher age for boys. That is why I don't suggest any age for boys.

Q. Now amongst the Mahratta community of which you know so much, do you think that there is any risk in villages of the girls going wrong if they are kept unmarried till 14?

A. I should say that there is a certain amount of risk in keeping girls unmarried till 14.

Q. Why should there be a risk in villages? Perhaps you are probably thinking of the field labour or perhaps are you thinking of the home conditions also?

A. There is a good deal of occupation in the home also but still I think there is some risk.

Q. Do you think there will be a great deal of dissatisfaction among the Mahratta community if we raise the age from 3, 4 and sometimes in the fetus to 14 or do you think that with little grumbling the law will be accepted?

A. I think the law will be accepted and the conditions will settle down within a few years.

Q. Have you any method to suggest by which we could allow marriages at any age—pre-puberty or otherwise as they take place now—and effectually prevent early maternity?

A. I cannot suggest anything.

Q. Do you think fixing the minimum age of marriage is the only remedy?

A. I think keeping the girl and the boy apart as long as possible is the remedy. If we can keep them in the same household as married people, it is not possible.

Mr. Mudaliyar: Did your Legislative Council consider the question of either marriage or consent?

A. Yes, we passed a resolution supporting Sarda's Bill yesterday.

Q. Was there much opposition?

A. There was no opposition at all.

Q. It was unanimously passed approving 14 as the age of marriage?

A. Yes.

Q. I do not understand what you mean by adultery in paragraph 2 of your memo?

A. With reference to the present adultery section what I mean is that the husband's consent or connivance should not be treated as consent for the illicit connection.

Q. Is that in connection with extra-marital cases that you are talking of?

A. Yes.

Q. Do you realise that adultery is not a criminal offence in any other country?

A. Yes.

Q. And the nature of the injury to the husband is damages for the loss of honour of his wife?

A. Yes.

Q. Are you for fixing 18 for extra-marital cases?

A. Yes.

Q. I do not understand your answer to Question No. 15—You say "There ought to be a presumption that an unmarried girl is below 16".

A. I mean the burden of proof should be shifted over to the accused.

Q. Would you make a distinction between married and unmarried girls in the case of extra-marital cases?

A. What I had in mind while replying to this question was really the extra-marital cases of private unmarried girls.

Q. Is it intended to penalise the accused to prove the age of his victim? When you require a proof it ought to be something which is within his knowledge or something which he could readily get hold of or something which he must necessarily be aware of. It is merely a question of adding punishment to him. Do you think it will be fair to the accused to place the burden on him?

A. My position about the whole of this question is that there must be as many difficulties put in the way of accused as possible. I consider it sufficient justification to put this additional difficulty in his way because I think the question is such that we shall not be able to administer it properly.

Q. Do you practically want the man to desist from the offence?

A. Yes.

Q. I do not quite follow your suggestion about prostitution in paragraph 3 of your memo. Do you want State regulated prostitution?

A. Yes.

Q. Do you think that suggestion is in keeping with the move to abolish prostitution all over the country whether it is possible or not?

A. I think it is impracticable.

Q. Do you think that regulation would be acceptable to those who want to abolish it altogether? Don't you think they will look upon it as a greater evil and take that the State is encouraging it?

A. I think it is impracticable to abolish and therefore it should be regulated.

Q. As against that there is the view point that the State by regulating it recognises it.

A. I think out of the two positions this is the lesser evil and a less dangerous position.

Q. With reference to the immediate question that we are concerned even State regulated prostitution will help us to reduce the number of extra-marital offences because girls below a certain age would not be in brothels as there will be State supervision over brothels. Is that what you mean?

A. That is one of the points. The second point is that if a man knows that brothels are under supervision and there will be evidence against him if he goes there which will involve certain risks in his married life. It will also be easy for the parents of the girls not to give their girls in marriage to persons of this description.

Q. Do you think that before a girl is given in marriage the parents of the girl ought to be perfectly sure that the future husband is a moral man?

A. That would be one of the circumstances to help him. I am not only suggesting supervision but I am also suggesting registration of customers.

Q. Do you think it is possible?

A. Anybody who goes there ought to be made to put his name. It will be a legal obligation but I do not know how it will be carried on.

Mr. Yakub: Would you also like to have an age of marriage fixed for boys?

A. I would not object to fixing the age of marriage for boys but the fixing of marriage age for girls would automatically result in raising the age of marriage of boys.

Q. Generally speaking what should be the proper age for marriage of boys?

A. I should say never less than 16.

Q. In the case of infringement of law of marriage whom would you give the right of complaint?

A. Complaint may be made by anybody.

Q. Would you make it cognisable or non-cognisable?

A. I have expressed a certain amount of diffidence about the police and although my inclination is to make it cognisable I do not forget the fact that there is a danger of harassment involved in it. Therefore I would first of all make it cognisable and wait and see the result.

Q. Are you in favour of making it cognisable?

A. Yes but at the same time I do not feel very easy about it because I feel it would not be administered in the spirit in which it ought to be.

Q. How would the age be ascertained in those cases? If you subject the girl to medical examination soon after she is married will it not cause a great deal of annoyance to the public?

A. No.

Q. Will it not be difficult to prove the age?

A. I do not think so.

Q. Those who know the correct age, i.e., the parents will not give it out because they are the accused persons. How will you prove the correct age?

A. There can be evidence of the priest of the family and perhaps there may be evidence of birth registration. There may be the evidence of the nurse who attended the birth of the child.

Q. You expect that the priest and the midwife who attended during the birth of a child would always be alive at the time of marriage?

A. Sometime the date of birth of child will be known to people in the village.

Q. Will anybody be able to tell the correct age after 14 years?

A. It will depend on individual cases how to collect evidence.

Q. Who will collect the evidence?

A. The Police.

Q. How will the police be able to collect evidence? Don't you think there will be practical difficulties in the working of this law if it is passed? The girl shall have to be subjected to medical examination and certainly it will cause great annoyance and it is not so easy a task for any medical man to give correct age. How will you make it practicable?

A. I really do not know how in each case it will work but I should think when a case really comes up it should be easy to find out the age because we also keep horoscopes.

Q. Before enacting a law or before making any recommendation we must see whether there are any practical difficulties in the way of working them and if so remove them.

A. Horoscopes will be helpful in many cases.

Q. Horoscopes are not kept in all families. Lower classes do not keep horoscopes, Mohamedans keep no horoscopes. Is it not?

A. I am talking of the Marhathas.

Q. But the law will apply to the whole of the country.

A. It can be ascertained by means of birth registers.

Q. Are names given in the birth registers?

A. The description is given to sufficient extent but if names are entered it would be better.

Q. Would you propose that a supplementary entry should be made in the register of births after the name is given to the child?

A. Yes.

Q. Are you also in favour of registration of marriages?

A. I do not object to it at all. I would take it as an improvement.

Q. Who should register marriages?

A. Sub-registrars.

Q. Don't you think it will cause very great inconvenience to the villagers who will have to go miles off to have the marriage registered?

A. It would be troublesome but I would consider it an improvement on the present system.

Q. Would you not be satisfied if these registers are kept by kukhia or patwary of the village so that it may be very convenient for the men to go and have the marriage registered?

A. I should not object.

Q. Would you approve of it?

A. To make a beginning I would approve of it.

Q. Would you make this registration free?

A. Yes.

Q. Would you also recommend that a counterfoil of this entry be given to the parents of the parties concerned so that it may be some evidence against harassment?

A. Yes.

Q. And also a counterfoil of the birth register be kept by the person reporting a Birth?

A. Yes.

Q. Are you satisfied with the present system of trial of matrimonial cases or would you prefer that such cases be tried by special matrimonial courts consisting of one judge and 2 non-officials acting as co-judges?

A. To begin with I would say that these cases should be tried by ordinary courts.

Q. Don't you think it would inspire more confidence and obviate unnecessary waiting?

A. I am not inclined really to accept special tribunals.

Q. Would you prefer that these cases should be tried by honorary magistrates?

A. Not necessarily.

Q. Supposing it may not be found possible to have a law fixing the age of marriage would you then raise the age of consent as a second best alternative?

A. Yes.

Q. Can you suggest any methods to bring these cases to light?

A. I cannot think of any.

Q. Do you think if women police are appointed it will facilitate making enquiry in these cases and more cases would come to light.

A. It will be altogether a dangerous thing.

Q. Do you want the State to interfere in the domestic affairs of the people in marital cases?

A. No.

Q. Why do you approve of a law fixing the age of marriage?

A. I have said we should keep in touch with the direction in which the opinion may ultimately flow.

Q. You want that this law may be passed but it may not come into operation as long as the public opinion is not in its favour?

A. What I mean is this that in spite of the law for sometime to come we will find that it is being broken and it is very difficult to detect or administer the law as it stands.

Q. Do you not want to adopt any measures to bring offences to light?

A. Not in intra-marital cases.

Q. What is the use of having a law if you want to keep it a dead letter. What is the use of raising the age to 14?

A. Public opinion will adjust themselves to that age I cannot suggest anything more than that. I want the law even if it is a dead letter because it is worth having.

Q. Would you make cases of breach of consent law compoundable?

A. Yes.

Q. What punishment would you suggest for cases of girls between 12 and 14?

A. Small imprisonment or fine.

Q. Would you be satisfied if instead of making a law fixing an age for marriage a law were enacted prohibiting girls to go to the husband's house before 14 years.

A. I do not approve that a girl should be married and then remain with her parents.

Q. Do you think that there are some injunctions in the Hindu Law which lay down that girls must be married before puberty?

A. Yes, there are.

Q. Don't you think that this law fixing the age of marriage at 14 would interfere with the religious injunctions of Hindus? Would you accept Government interference in religious matters of the people of the country?

A. Yes. I do not think it is against the Hindu sastras because sastras say that we should move with the times.

Mr. Kanhaiya Lal: Can you tell me in what communities early marriage is practised in Berar?

A. Practically in all communities except perhaps the most advanced communities namely the Brahmans and Parbhus.

Q. What is the usual age of marriage among these communities who practise early marriage?

A. It is nowhere before 10.

Q. And among the Parbhus and Brahmans?

A. It is certainly higher than other communities but I cannot give you the average age.

Q. Is it after puberty?

A. Not necessarily.

Q. Even among the Brahmans and Parbhus are marriages celebrated before puberty?

A. Among the educated people they are after puberty but everybody tries to get his girl married before puberty.

Q. What is the age among the Mohamedans?

A. I cannot say.

Q. What is the usual age of marriage among the Marhatta Brahmans?

A. It is before puberty.

Q. Have you got village panchayats in this part of the country?

A. Yes.

Q. Would you like that cases of infringement of the marriage law should be entrusted to village panchayats to minimise public inconvenience?

A. I would not allow that.

Q. Are the pauchayats working satisfactorily?

A. Some of them are efficient. They have been formed recently.

Q. Have they criminal powers?

A. Yes.

Q. How would you remedy inconvenience to the public?

A. Village panchayats would not solve our problems because they are far too few.

Q. If they become widespread you might think they will be useful.

A. If cases begin to come in large numbers panchayats might be helpful but then we shall have to get different types of panchayats.

Q. What type would you recommend?

A. Now we have more or less nominated kinds of panchayats.

Q. If you get partly nominated and partly elected would that do?

A. We should have entirely elected.

Q. Mr. Jatter made an enquiry and a report and on that report the Panchayat Act was drafted?

A. Yes, it is the same act with certain modifications.

Q. Do you recommend that these panchayats should be entrusted with special powers in criminal cases?

A. Yes.

Q. You have recommended registration of marriages. Do you think it will work if we have a department of registration and a non-official appointed as Registrar to be paid from the fees realised from the registration?

A. I do not think that would be popular at all. No tax of any kind would be popular.

Q. But how would you pay the Registrar?

A. If we want non-official Registrars we can have as many as we like. I do not think there is any necessity for having a higher official.

Q. My object in having a higher officer is that some official should examine the entries in the registers and check them.

A. I have not thought over the question.

Q. It has been suggested that candidates should not be allowed to go up for high school or matriculation examination if they are married after a certain period say within 2 years of notice. Would that not indirectly postpone marriages?

A. That will be penalising the boy for the fault of his parents.

Q. No parent will marry the boy because his future prospects will be marred. Do you think such a rule will work?

A. The difficulty I anticipate is that the parents of the boys may not be so vigilant about this law.

Q. When they send their boys for education they are all aware of the system of education and they should be more careful not to marry their boys. Don't you think this rule effect the purpose better than a penal enactment?

A. It sometimes occurs that out of short-sightedness the parents take the boys out of school.

Q. In how many cases will this occur that parents out of short-sightedness will infringe the rule?

A. Among the Marathas it will occur very largely.

**Written Statement, dated the 11th August 1928, of Mrs. ANASUYA-  
BAI KALE, M.L.C., Nagpur.**

1. I cannot state definitely whether there is any dissatisfaction with the state of the law as to the Age of Consent, but I can say with confidence, that there is a strong feeling even among the labouring classes, that the Age of Consent must be raised to 16, or 3 years after puberty.

2. It is necessary to change the present law because of three reasons.--

(1) Now that the marriageable age is going to be increased, an age of consent ought to be higher than that of marriage (which will, it is expected, be at least 14).

(2) Now that the girls are inclined to come out of Purdah or that the efforts are being made to remove Purdah (they are leaving the retired life) for education, it is necessary that they should get State Protection.

(3) The effect on their moral and intellectual growth is too harmful if not apparent.

3. There are some cases of seduction, but more often the Caste Panchayats decide the cases and punish the offender. Very few of them seek State Help. Either they are not aware of such a law, or if they are, they do not take the trouble of approaching police. When such is the case how is the law, as amended, going to be more effective? I do not think that an honest effort has been made to make the law widely known. A man committing rape never stops to think of the age of the girl, and ignorant people can never tell the proper age as they cannot distinguish between 13 and 14.



In order to make the law effective an effort must be made to circulate it widely in the vernaculars. We must make a special effort to make the villagers understand what the law is, and instead of prescribing the age limits which the ignorant people cannot understand (they cannot distinguish between 13 and 14) we should lay down that upto the age of 3 years after puberty, if rape is committed, then the man will be punished. (I presume that a girl attains puberty between the age of 12-14.) There ought to be a vigilance society, to watch over and report to the proper authorities, because the affected persons are not quite willing to report such matters.

Village Panchayats should be authorised to administer this law and a regular Birth Register ought to be kept in each and every village of India.

4. It is difficult to answer this question, because one cannot say whether husbands did or did not have intercourse with their wives before the age of 13. Many of these people are ignorant and illiterate and so they are not aware of any such law. When they cannot even state the proper age, how can we say whether it has created the desired effect? The registration of birth should be enforced more strictly.

Even if cohabitation takes place before the prescribed age, such cases are not known generally. The wife does not complain of this against her husband. This question will be automatically solved when the marriageable age has been raised to 16.

5. Generally they attain puberty between the ages of 12 and 14. But here again the same difficulty arises. The ignorant people cannot tell the exact age. So the latter part of the question does not arise.

6. (a) Generally no cohabitation takes place before puberty unless in some cases the husband is incorrigible. But even then if there is some elderly woman in the house she sends the girl to her parents or other relatives.

(b) Yes they perform the Gaona ceremony immediately after puberty. Even amongst the high-class Hindus the Garbadhan ceremony is performed immediately after puberty.

(c) As puberty varies between 12 and 14 it takes place in some cases before 13 years.

7. The reason why the Garbadhan ceremony is performed is two fold. One is that after puberty a girl is supposed to be fit to bear child, and second is, the elderly people in the family do not eat at her hands if the religious ceremony is not performed, I am not aware of any punishment that is imposed.

8. Yes it is universally performed. It is performed after the first menses. Even if a husband cohabits with his wife before puberty the ceremony is performed. Amongst the high-class Hindus it is generally performed on the sixteenth day after the first menses, and if a girl conceives on that particular day it is supposed to be auspicious.

9. No, because generally puberty varies on account of different reasons. We find that girls here attain it generally between 12 and 14. But in cold countries they generally attain it after 16. It is also the opinion of some that the menses can be delayed by taking sufficient physical exercise, or by having a healthier atmosphere in the family and proper environments. So the attainment of puberty is not a sufficient reason for maturity. Doctors say that a girl is physically fit for consummation between 16 and 18, and not before that, as they say that the internal organs are not fully developed to bear conception.

10. This is a difficult question to answer, because though a girl is physically unfit she may give her consent to consummation. The reason is our social system. As soon as a baby-girl is born her mind is filled with the idea of marriage. So much nonsense is talked in her presence with result that she begins to think of marriage when she is young. Not only

this but she comes to know the relation of husband and wife even before puberty. Under such circumstances it is no wonder she gives consent to cohabitation because she is curious. But I do not think she is aware of consequences before the age of 18. I know of one instance when a girl of 15 refused her husband to come near her, so much so, that she ran to her parents with the complaint that her husband wanted to take liberty with her. Her parents kept her with them 2/3 years, after which she went to her husband and is now quite happy. I have quoted this instance to show that if a girl is allowed to grow in free atmosphere, she is unable to understand the meaning of marriage and its consequences before age of 17 or 18 years.

11. I have no professional experience but I can tell from what I see that terrible disaster follows this early cohabitation. Every day girls are dying in number either immediately after child birth, or if they do survive they die of consumption. The children of these girls are very weak and the death rate of babies below one year, is sufficient evidence of the result on the progeny.

12. Yes it is due to early consummation and also to economic stringency of the people

13. Yes even the poor labourers realise the necessity of increasing the marriageable age. They are very happy at the thought that the Government is going to give them protection against their caste-panchayats of which they are afraid. Amongst the higher class they do not realise the significance of this as the marriageable age has been already increased unconsciously.

14. No.

17. To avoid marital offences is to raise the marriageable age to 16. And the early marriages should be penalised and the penalty should be imposed upon parents, guardians, the priests and any other persons responsible in bringing about the marriage. The punishment in extra-marital offences should remain as it is.

20. In my opinion to raise the marriageable age of girls is the proper and effective measure in marital cases. To determine the age of consent in marital cases is self contradicting as in no case rape is conceivable. The law of rape should only be applicable to strangers. The raising of marriageable age will be more in conformity with public opinion in this province.

21. I prefer the first alternative and offences under this law should be punishable, and persons—guardians, parents, and priests—responsible in bringing about the marriages, and performing Garbadhan, should be punished. No amount of social propaganda or education will bring about the desired result, within reasonable time.

### Oral Evidence of Mrs. ANASUYABAI KALE, M.L.C., Nagpur.

(Nagpur, 26th January 1929.)

Chairman: Since when are you a member of the Legislative Council?

A. Since last March.

Q. I understand that you were able to carry a resolution supporting Sarda's Bill about child-marriages in your Council yesterday.

A. Yes.

Q. Do you think that we can, for the purposes of this Committee, take this to be the representative opinion of the people of C. P. and Berar?

A. Yes.

Q. Are you connected with any social reform organisations amongst the ladies?

A. Not very much. We deliver some lectures in connection with child-marriages.

Q. Have you moved amongst orthodox ladies so that you can say what their ideas on this subject are? We know the views of advanced women. What are the views of orthodox women amongst whom you might have had a chance of working?

A. Only the other day I was discussing this question with an elderly lady. Her objection to legislation was on the ground that as at present, only men will have a hand in the legislation, and therefore women will be solely dependent upon men. She said that so long as there are not many ladies who can take part in such legislation it will not be wise to have laws made by men.

Q. Do they realise that early marriage is an evil?

A. They do not.

Q. Have you reason to believe that the present law of the age of consent at 13 is broken in many cases, that is, are there many cases of consummation before 13 complete?

A. Yes.

Q. Is it found more amongst the orthodox classes, or the advanced classes?

A. I think the name advanced is only an artificial name. We cannot say definitely who are the advanced classes, and who are the orthodox classes.

Q. Amongst the classes amongst whom pre-puberty marriages take place do you think that consummation before 13 is of general occurrence?

A. Amongst them consummation generally depends upon the puberty period, and the prevalent idea is to have consummation of marriage immediately after puberty, no matter what the age of the girl is.

Q. Do orthodox ladies realise the evil effects of early maternity? Do they seem to bewail the fate of their daughters who had early maternity and suffered?

A. I do not think they realise it. They attribute it to other things.

Q. If what you state is correct, namely, that they do not realise it, it means that they do not understand the problem. If that is so, how are you justified in saying that raising the marriageable age will be more in conformity with public opinion?

A. When we delivered the lectures about child-marriages we told them that there is going to be legislation on the subject, and they said they will be glad, because they would not then be troubled by their caste panchayats of which they are so much afraid. This was in the mill area.

Q. But the public does not consist of mill people alone?

A. Amongst the middle classes I do not think marriage takes place so early as that.

Q. Do you not know that there are a very large number of people who consider that pre-puberty marriage is expedient and they should have it at all costs?

A. I do not know that.

Q. What age would you recommend for the age of marriage of boys and girls?

A. 14 for girls and 18 for boys as in Sarda's Bill. But personally I would like to have 16. I put down 14 as a concession to orthodox people.

Q. Have you had occasion to move about amongst the working classes?

A. No.

Q. Are you connected with the lying-in hospital which is conducted by the Sitabaldi ladies?

A. I am not.

Q. Have you considered this question of marriage for a long time?

A. I do not think so much attention has been given to the subject. What we felt was that if we raised the age of marriage sufficiently high, then the question of consummation of marriage will be automatically solved.

Q. Would you prefer the age of marriage being fixed, rather than the age of consent?

A. Yes.

Q. Do you think that if the age of consent in marital cases is fixed at 16, the law will be effective, and cases will be brought to light?

A. No; I do not think.

Q. So the law of the age of consent alone would not work?

A. No.

Q. As a second best, would you have the age of consent law if there is no marriage law?

A. Yes.

Q. Do you think that it would be better that marital cases are decided by a body of women? Either in the case of breach of the law of marriages or the age of consent in marital cases would you prefer women judges trying the case to men judges?

A. I think it should be a mixed body.

Q. Do you think it will inspire better public confidence?

A. Apart from that, I think both will benefit by each other's experience. I think that a mixed tribunal will be better.

Q. Do you know anything about the registration of births?

A. No.

Q. Have you known of many girls who became mothers before 14?

A. Only one I know.

Q. How many years ago was it?

A. She died three or four years ago.

Q. What caste was the girl?

A. Brahmin.

Q. Do you think it was an exceptional case?

A. I do not know that. This particular girl I knew.

*Dr Beadon:* What happened in the case of the Brahmin girl whom you are talking of?

A. She was delivered of a child immediately after she was married. After a month or two she developed consumption, and then she succumbed.

Q. You say that every day girls are dying in numbers either immediately after child-birth or if they do survive they die of consumption. Do you think it is fairly common?

A. I cannot say that it is entirely due to early marriage. I think that the mortality amongst girls is more or less due to the social system being changed, especially due to the joint family system having been gradually destroyed. Formerly though girls used to be married early, there were certain circumstances which prevented them from staying at their husbands' houses very long. For instance when the girl was pregnant for the first time she generally used to go to her parents' house after the 6th or 7th month, and would not return to her husband till the child was 6 or 7 months old. That prevented so many weaknesses amongst us, but now this joint family system is breaking up.

Q. Why is this joint family system breaking up?

A. It is mostly due to economic reasons. People now-a-days go out to earn their living, and they always want the help of their wives in their houses to attend to the household work. Another thing is more artificial things are coming up. Our girls are taking up to more fashions.

Q. You say that the children of these mothers are weak.

A. Yes; I was connected with baby shows, and I found that very few babies were healthy.

Q. Is it especially so in the case of young mothers?

A. I cannot say that.

Mrs. Nehru: Have you any experience of the villages so that you can speak with authority whether the village panchayats can be trusted with such powers?

A. No. But I think they will be able to try the cases.

Q. You want three years after puberty to be the time fixed for consummation and not any age. Do you not think it will be more difficult to prove?

A. An ordinary woman will be better able to tell you when she attained puberty rather than what her age is.

Q. Do you think she will give the right information if she knows that there will be a prosecution?

A. I think it will be easier if the birth registers are kept regularly. Otherwise I think it is better to have as two or three years after puberty.

Q. Supposing a person does not report births?

A. He ought to be punished in the interests of the community.

Q. You say that elderly people do not eat from the hands of a girl who is not consummated. Amongst what community does this prevail?

A. Amongst the Brahmins, especially amongst the old-fashioned people.

Q. Does that custom prevail, because they believe in the religious injunction of consummation soon after puberty?

A. They may believe; but I am not aware of it.

Q. What do you think then is the cause for their not taking food at the hands of girls whose marriage has not been consummated?

A. I think it is some religious belief.

Q. Is it the ceremony only that they want, or do they want the actual consummation of marriage?

A. In some cases I found that some women do not take food from the hands of the girls if they have not got children, whatever the age of the girls may be.

Q. Is it a custom?

A. It must be a custom.

Q. What punishment would you give to those who break the marriage law?

A. I am of opinion that they should be both fined and imprisoned, because fine will affect the poor man, and imprisonment will affect the rich man.

Q. How much imprisonment would you have?

A. That I cannot say.

Q. Should the mother also be punished?

A. Yes; both the father and the mother; whoever is responsible for the marriage.

Q. Do you think if the power of making complaints against the breaches of the Age of Consent law is given to women's associations they will be able to utilise it?

A. I do not know really, because from my enquiry from the working classes I find that they are not willing to go to court. They want these matters to be left to their panchayats.

Q. Even supposing the village panchayats are turned into tribunals the other things remaining the same, do you think women's associations will be able to report these cases?

A. Yes.

Q. In towns what will you have as tribunals?

A. I have no idea.

Q. Do you think women magistrates can be appointed?

A. I do not know.

Mr. Yakub: Do you think the advancement of education and social reform activities will remove the evil of early consummation and early maternity within an appreciable degree of time?

A. I do not know; but I do not think even if one has got education, human nature will change.

Q. Do you think that instead of leaving these things to the advancement of education, legislation is necessary?

A. I think to remove the evil of early marriage legislation is necessary. It will help to make matters easy.

Q. Do you think the State is not justified in legislating about social matters?

A. I do not think so. The present Councils are more representative and contain people of so many different opinions, so that we can very well take measures and pass legislation.

Mr. Kanhaiya Lal: You say that there should be a marriage law fixing 14 as the age of marriage. Supposing there is no marriage law are you then in favour of a consent law?

A. Yes; but we should see that the marriage law is passed. I think a consent law alone will be harmful; for instance if the girl is married at 12, and the parents of the girl say that they will not send the girl to the husband, the husband may marry another wife. In that case the girl will suffer.

Q. Supposing there is no marriage law, would you be satisfied with the present law at 13?

A. You have got to be. So long as the law is not on the side of the girls, I would not suggest it.

Q. If you raise the age to 14 or 15, do you not think that many more girls will be saved?

A. I do not think a girl would like her husband to go to jail. Nobody will report cases even if there is law.

Q. The husband might be given warning, and security taken from him.

A. I say that the marriageable age should be raised to such an extent, that this won't be necessary.

Q. Supposing the marriage law is infringed, and the marriage is celebrated within the prescribed age?

A. I do not think there will be many breaches of the law.

Q. Would you not do something to prevent consummation if the marriage law is broken?

A. I have not considered it from that point of view. I think marriage legislation would be the only solution.

Q. In marital cases would you allow the offence to be compounded with the permission of the court so that the girl may not suffer?

A. But still she suffers.

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Written Statement, dated the 23rd August 1928, of Mr. B. G. KHAPARDE, B.A., LL.B., M.L.C., Amraoti.

1. So far as I am aware, no dissatisfaction has been expressed by the public about the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. Even if there be any discontent amongst the public

it has never been expressed through any organised body. I have reasons to believe that there is really no discontent, and if the provisions of the sections are to be changed it should be done more in anticipation of any good that may be calculated to follow rather than because there is no need felt just at present.

2. As I said in answer to Question 1, there does not seem any justification for changing the law except an anticipation of good that may be calculated to follow. The public, by which I mean large masses of the public, is so illiterate that they are unable to appreciate either the benefits of any advance made in the present law or to feel the disadvantage that may be involved in the provisions of law as they stand to-day. The only justification for making an advance on the present law by increasing the Age of Consent is that offences which do not at present come within the purview of the present law will come under it. Perhaps this may have the effect of showing an increasing tendency towards crime. But this shall have to be put up in the interests of the community at large.

3. The reports on judicial administration for the last seven years in this province will show that there has been never any marked increase or decrease in this sort of crime. We have no reason to suppose that seduction and rape are more frequent in this part of the country than any other. If the statistics of this province were compared with those of others, for instance, the Punjab and Bengal, it would be found that this sort of crime is less frequent in the Central Provinces and Berar than in other parts of the country. There have been no special circumstances which should either increase or decrease this crime especially in this province. I do not believe that the raising of the Age of Consent to 14 has succeeded in preventing or reducing cases of rape outside the marital state, nor has it reduced the improper selection of girls for immoral purposes.

4. The amendment of 1925, raising the Age of Consent within the marital state to 13 years has not, I believe, been effected in protecting married girls against cohabitation with husbands within the prescribed age limit. I believe the offence has been committed all the same though it has remained undetected. Once the marriage takes place and the girl attains puberty within 13 years the consummation of the marriage is not postponed merely because the law is there. It is extremely difficult to detect of this kind firstly because there is no reason why it should come to the notice of those who are interested in putting the law in force, and secondly because the parents of either the girl or the boy are the last persons to give information of this kind. Public in this direction is developing, but it is not because of the law but because of the general awakening amongst the public on account of the general advancement that is due to contact with Western civilisation and also the recognition of the necessity of increasing the marriageable age of the boys and girls for reasons of health and sanitation. I do not believe the marriage has ever been put off beyond the age of 13 merely because the Indian Penal Code enacts that it is a crime for a husband to cohabit with his wife before she is of a certain age. Legislation in this matter is not likely to prove effective, and it is only the awakening of the masses towards their duty to their children and society at large that will bring about the necessary change gradually. Law, even if it is there, has the tendency of stimulating the desire to evade it, and a determined effort to evade a law cannot be checked by any precautionary measures that may be taken, and no law which the public are not willing to abide by or do not know the value of abiding it, can have the desired effect, unless the great mass of populace sympathises with the motives of the legislation, and this is specially true in a matter of this kind where a large number of offences do go undetected on account of want of means to detect them.

5. In this part of the country girls attain puberty between 12 and 13 generally and between 13 and 14 in some cases though it is not rare that even this age is sometimes exceeded. The maturity of the physical body of the girl depends on environments, and I believe so long as the climatic condi-

tions are the same there is no reason why the age should differ according to castes, communities or sexes of society. Hygienic conditions under which a particular class or community may be living and the kind of food on which the bodies are nourished have certainly something to do with the puberty of girls; but the differences as brought about on this account are not so numerous as to be taken into account though they are striking in some cases. Girls in well-to-do families who are well fed and have less worries attain puberty quicker than the girls who are ill fed, ill clad and brought up under filthy conditions. As a rule it may safely be said that the girls in the working classes attain puberty a little later than the girls of the class who do not do actual manual labour. But I should also like to observe that the girls of the labouring classes are often times more healthy and better built on account of the fresh air they breathe when working out in fields, the frugal and wholesome food they are fed upon and the manual labour they do and the consequent exercise, than the girls who are kept within doors and lack exercise.

6. There is no class in this part of the country in which the husband is allowed to cohabit with his wife before she attains puberty, and any occurrence of this kind is extremely to come across, if not impossible. It is common that the man and the girl begin to live as man and wife soon after the girl attains puberty, whether that be before 13 years or afterwards; it does not make much of a difference. As I have said before, this kind of offence is practically never detected, and I have not come across cases where a husband was challaned for cohabiting with his wife because of her being under 14 or 13 years. I have no doubt that this offence, so far as the technicality of the law is concerned, had happened.

7. There is a religious notion amongst the Hindus that the consummation of the marriage should take place within sixteen days from the attaining of puberty by the girl. It is not invariably followed. But it is a general practice to bring about the consummation of the marriage within the time prescribed by religion. There is no severe penalty prescribed for the breach of this injunction, and cases have come under my observation where this injunction has not been heeded to and broken with the least compunction on the ground of either the girl or the boy being of tender health. Though the injunction stands there, the parents usually, if not invariably, do take the health of the boy and the girl into consideration before acting on the injunction, and this tendency is increasing every day. So far as I am aware this injunction is laid down in a text in *Manu* and *Yadnavalkya*, and I may be able to give more definite information about it in my own evidence when called upon to do so.

8. *Garbhādan* ceremony is almost invariably performed after the girl attains puberty and, as I said in my answer to the previous question the first consummation of the marriage takes place within sixteen days from the attaining of the puberty; it may be said to coincide with the consummation of the marriage. It is invariably performed after the attaining of puberty generally within a few months of the girl's attaining puberty. Convenient interpretation has been put upon the text enjoining the consummation of marriage within sixteen days after the attaining of puberty by interpreting the text to mean that the consummation must take place within sixteen days after the girl gets her monthly course and the original text is easily evaded by interpreting it to mean that it means any month and not the first month. Thus the consummation of the marriage is sometimes postponed not only several months but sometimes several years. Cases of the last kind are, however, rare to meet with.

9. I do not consider that the mere attaining of puberty is sufficient indication of the physical maturity to justify consummation of the marriage. I believe three years should elapse after the attaining of puberty before the marriage is consummated, but that is an ideal. At least one or two years before the marriage is consummated must be given for the girl to develop her physique. That should prevent all chances of injury to health.



Q. What is the strength of the Nationalist Party?

A. We are 18 strong.

Q. Are you yourself against legislation fixing the minimum age of marriage?

A. Yes.

Q. Are you also against Age of Consent being put in the statute book?

A. Yes.

Q. Do you object to the present law of 13?

A. Since I object to any kind of legislation on this subject, I would object to any advance being made.

Q. Would you object to 14?

A. The higher the age the greater the objection.

Q. At 13 will you have lesser objection?

A. Yes.

Q. I can understand your objection to legislation at all on the subject but if you say that that is an evil and if legislation is to be had, the higher the age the better. Why do you make any difference in decrease?

A. My objection is higher the age greater chances of offences being committed and therefore greater chances of intervention by law.

Q. Supposing the Age of Consent is raised to 16, then the chances are that there will be many more cases of maternity before 16. Is it not?

A. Yes.

Q. Therefore they are more likely to be detected?

A. I do not agree with you because there are scientific methods of birth control.

Q. Would you like them to be made popular in this country?

A. I think this is besides the point.

Q. I thought you were referring to that as a means of checking the evil. According to you the evil is not so much in cohabitation as it is in maternity. Is that so?

A. I have said that by maternity a girl comes under physical strain which she may not be able to bear. I do think one may be greater evil but both are evils.

Q. You have mentioned some fact in your answer to Question No. 20 as supporting your proposition that the law is not needed. You say that marriages are going up and one reason is economic consideration. In spite of these reasons is it not a fact that among 80 per cent. Marhatta Brahmans to-day there are marriages of girls below 12?

A. I am not inclined to agree with you. The percentage is very fast decreasing.

Q. What is the percentage to-day?

A. I would put it at 40 per cent. or 50 per cent.

Q. Do you think that girls are married generally after 13?

A. I have not seen girls married below 14.

Q. Is that the case now?

A. Yes.

Q. Don't you think there is still a large number of pre-puberty marriages?

A. There are economic reasons which put off marriages. People do not get husbands. I have come across cases where they could get girls married but they would not get them married.

Q. Is that not a very small class?

A. There is a small class who wants to get their girls married before 14.

Q. Don't you think the orthodox community like pre-puberty marriages and they are a large class?

A. They are a small minority and they are decreasing to still smaller minority. The surrounding circumstances are so fast developing that they cannot afford to remain orthodox.

Q. Do you think then there is a large class which has already been converted?

A. Yes.

Q. If that is so and if there is a large class even among the orthodox people who have really moved on with the times, as you think, then don't you think we should bring the smaller minority into line?

A. They will come into line without the law.

Q. Have you reason to believe that amongst the Marhatta Brahmins or any other community in Berar the law of the Age of Consent standing at 13 is broken?

A. I can't boast of knowledge about Marhatta community, but I can tell you something about the Brahmin community of which I am a member. In that community there may be instances but they are very rare.

Q. Out of the two laws, the law raising the Age of Consent and a law fixing the minimum age of marriage, supposing a choice was to be made, which would you prefer?

A. I should choose neither.

Q. Supposing a law has to be enacted?

A. I would oppose it.

Q. In what way?

A. In all the ways I can. I would do it through the press and from the platform.

Q. Are you of opinion that a law like Sarda's Bill would be more effective than merely the Age of Consent standing at 14?

A. I don't think it will be effective. Apart from that it will disturb the present peace of society, I don't think it would do much good.

Q. But you said three-fourth of the people have already progressed. Will the mere fact of legislation coming into existence disturb the peace of society?

A. People resent being compelled to do a thing which they are willing to do. If I were told that I will be put into jail for marrying my girl before 16 I would resent that but if I were persuaded to do so I may do that. Coercion by law would be resulted. My additional reason is that the law may interfere with the judgment of the people who think and have reason to believe that they should marry their girls a little earlier.

Q. There is a small minority who should not like law coming into existence.

A. There may be a minority.

Q. Are you opposed to legislation on any social matter?

A. Speaking very generally, I am. There may be a particular social matter on which I may favour legislation.

Q. Would you be for instance in favour of having compulsory free education?

A. I do not consider that a social matter.

Q. It is a social matter. With a large number of people it is an economic question.

A. It is an educational matter.

Q. Is it not an economic question with most of the people in the villages?

A. Then I believe my definition of social matters is different. If you say it concerns society and it is a social matter, I will say there is nothing in the world which is not a social matter.

Q. But this won't disturb the peace of society.

A. It is more a political question. We want people to be educated so that they may understand better and be better citizens.

Q. What about prohibition?

A. I want there should be prohibition but it should not be enforced by legislation.

Q. Even for prohibition don't you want legislation?

A. I suggest prohibition but legislation would not bring it about.

Q. Then is it only propaganda that would bring it about?

A. Yes.

Mrs. Nehru: Would you consider compulsory segregation of persons suffering from infectious diseases to be social legislation?

A. I would rather consider it to be a hygienic question.

Q. In that way you can exclude every thing?

A. I would exclude many things. Infectious disease has nothing to do with sociology.

Q. Then you don't consider it to be social legislation?

A. The laws according to which society develops are entirely different from the laws that govern epidemics.

Q. But it affects the health of the people as much as early consummation and early marriage do?

A. That is a figurative language. I don't think that is so. It is a very bad thing no doubt.

Chairman: Would you put the percentage of consummation of marriage below 13 at a very insignificant figure or do you think there is a very large percentage? Would you call it negligible?

A. I should put it down to about 15 to 20 per cent. I won't call it negligible. But I say these people will come up gradually without legislation.

Q. Is it a fact that in Berar amongst the Marhatta Brahmins consummation of marriage is frequent soon after puberty and is irrespective of the age of the girl?

A. But I have said that this injunction is being avoided more and more every day and people find some kind of excuse always to put off the consummation of marriage for a few months and in certain cases even a few years after the girl attains puberty.

Q. If they can help it.

A. And generally they do help it.

Q. Have you reason to think that the Hindu girls generally or Marhatta Brahmin girls specially run any risk of going wrong if they are not married till they are 14?

A. I don't think so. I think we do not run any risk even if the girls grows to 16.

Q. Would you say the same about villages?

A. No, because they are differently circumstanced and their environments are not so good.

Q. Therefore I am speaking of 14 and not 16 in their case. Do you think there is any risk of their becoming immoral till 14?

A. I don't think so. In any case there is no risk worth consideration.

Q. Among those castes in whom child marriage exists do you think it is merely because of custom or it is because of social tyranny or social feeling against late marriages or do you think it is really an economic question, that is to say, they cannot feed their girls up to a late age?

A. It is mere custom. People get used to do a thing for a long time and they do not like to leave their habits.

*Dr. Beadon :* You have said in answer to question No. 11 that you have come across cases where the health of girls has been affected and sometimes ruined on account of cohabitation, after puberty but before full development. Won't you mind giving us details of one or two instances that might have come to your notice during the last 3 or 4 years?

*A.* I know a Brahmin girl who became a mother at 15 complete. She was a very healthy girl but after she became a mother she gradually began to sink and in the course of year or two she succumbed.

*Q.* Was that after the first child-birth?

*A.* Yes. I know another girl who got three children one after another in the course of 4 years. She succumbed when she was 20.

*Q.* Was the first girl fairly well off?

*A.* She was in very good circumstances.

*Q.* Do you think then that early child-birth was the main factor in causing the death?

*A.* I do consider that one of the main reasons why she died was this child-birth at an early age. There were other circumstances perhaps which prolonged her illness but the main cause was early maternity. She lost all her strength and ultimately she succumbed.

*Q.* Was that long ago?

*A.* It was about 5 or 6 years back.

*Q.* What about the children of these young mothers? Are they on the whole fairly healthy?

*A.* I have observed they are fairly healthy but some of them are not.

*Q.* Would you say a large number was healthy or a large number was unhealthy?

*A.* I could not say that.

*Mrs. Nehru :* Are you in favour of suppression of brothels?

*A.* Yes.

*Q.* You don't consider that to be a social matter?

*A.* It is a social evil.

*Q.* Then how do you reconcile this with your idea of being against social legislation?

*A.* I did not say I am against legislation in every respect. I said there may be some things which should be put down by legislation but there are very few such things.

*Q.* Can you give any principles by which we may judge what social legislation you would approve of and what you would not?

*A.* Any legislation that interferes with the religious ideas of the people, any legislation that interferes with the long established custom to which they have been used and disturbs their peace of mind and any legislation which is likely to have its purpose served if the people are given sufficient time to develop and come up, will not meet my approval. I consider this is one of the matters in which improvement is being made very fast and progress is fairly good and in some time, I do not say many years, 5 or 10 years the people would come up to the standard to which the law expects them to come up.

*Q.* You might have read in the census report of 1911 that after all these years of propaganda hardly any change has been observed as regards the marriage age. Leaving alone the Central Provinces if we consider other provinces we will find that nearly everywhere, amongst 80 per cent. of people early marriage is still practised and even pre-puberty consummation is practised. If conditions are such after a propaganda of 150 years, don't you think that time has come for employing other methods besides the well tried propagand method?

A. To start with I should make it clear that I am speaking of conditions prevailing in this province and I do not take upon myself the responsibility of speaking for people who do not belong to this province. I can't for instance speak about Punjab, Bengal or Madras. I only say for this province we do not want legislation and if there are any circumstances which are brought to the notice of the Committee justifying legislation as regards other provinces I would not say anything. I am not a good judge for other provinces.

Q. If it is proved that in some cases pre-puberty consummation takes place and if in a majority of cases consummation immediately after puberty takes place would you then advise the Committee to undertake legislation for other provinces?

A. It all depends upon the provinces. If they think that without legislation they cannot make progress and social circumstances are such that they do not hope to make any progress then they may consider about this legislation.

Q. It is difficult to get at the opinion of the whole province as such because if we take the Council opinion as the criterion even that according to you won't be a good criterion. In that case only a plebiscite can be taken to decide whether the majority of the people want it or not?

A. You have got to take the intelligentia and ask them.

Q. If facts are such as I have described them to be, would you yourself under the circumstances advise legislation?

A. I am sorry I don't see my way to advise legislation. I would rather advise the committee to leave it to propagandist work. Legislation may appeal to the people once but legislation may not appeal twice or thrice.

Q. Are you against fixing any age of marriage?

A. I am against fixing any age of marriage by law. Let the society advance and fix the age themselves.

Q. Are you aware of the fact that there is a legal age of marriage however low nearly everywhere in the world?

A. The world circumstances may differ. I do not know why they have it in France or why they have it in Switzerland.

Mr. Kanhaiya Lal: The object is to accelerate progress.

A. I am not in favour of legislation.

Mrs. Nehru: There are three lacs of widows below 15 in our country. You are certainly in favour of avoiding their creation.

A. But what is the object of legislation raising the age of marriage? Is it contemplated that widowhood will be prevented?

Q. Yes, below a certain age.

A. I think girls will always become widows so long as boys keep dying. Widowhood may be postponed but legislation is not the cure.

Q. To prevent widowhood below 14 it is the most sure remedy. If people only begin to marry their girls after 14 there will be no widows below that age?

A. I am not quite sure of the desirability of this legislation.

Q. What really are your objections against the marriage legislation?

A. My objections are very simple. I think society should not be interfered with and it should be allowed to make an advance itself and when it comes by experience it would be much more effective than if it is brought about by legislation. You may legislate but I don't think that means progress of the society.

Q. But surely the people will have to abide by the law?

A. That is true.

Q. If it is desirable that girls should not be married up to a certain age, what hardship is there in preventing it by law? Do you oppose this merely on sentimental grounds?

A. The hardship is here that if a man wants to marry his girl at an early age because there is an advantageous match this law will prevent it. I will give you an example. Take the marriage of a boy who has been adopted to a rich man. The adoption may be made by a widowed rich man. The family will always be anxious to get the boy married because in case the boy dies they want an heir behind who will take the estate. There is therefore always a tendency to adopt a boy of a tender age, say 10 years. If you fix the age at 12 they will have to wait for two years and the family will always be anxious to get him married as soon as possible.

Q. Then with exemptions will you approve of the law?

A. Then in that case I would put the age as low as possible.

Q. What age would you have?

A. I have not given thought to that question. If I were asked to make legislation then I would think about it.

Q. In India married couples exist from the ages of zero to 15. Even before birth marriages are arranged. Yesterday a witness told us that that was so even in Central Provinces. On page 25 of Imperial Gazetteer of India, Central Provinces, you will find the same statement made (The statement was read to the witness). Such state of affairs must be remedied some how?

A. But these are very rare cases.

Q. In paragraph 2 you have said an advance in age may have the effect of showing an increasing tendency towards crime. Why do you think the commission of the offence will be increased if the age is raised? You are talking of extra-marital cases here.

A. I am talking about the law of consent as it is embodied in Section 375 of the Indian Penal Code, namely that below 14 years of age even the consent of the girl would not absolve the culprit of the offence.

Q. Would you increase that age to 18?

A. I don't mind. My objection to that is that you simply increase the chances of the crime. What I mean by that is that more crime will go undetected.

Q. Extra-marital relations are undesirable at any age, but how do you think crime will go undetected?

A. The more the intelligence the more the means and devices of concealing the crime. I won't mind raising the age but I think it will do no good.

Q. Will that not give more protection to girls?

A. The girls would be more intelligent and they would not keep on denying consent.

Q. But the question of consent does not arise?

A. If you fix that age the result will be that girls may deceive the people. I will not be so uncharitable as to say that they always do it. The girls will induce people and they will themselves escape and the men will suffer.

Q. Do you think there is likelihood of such a thing happening?

A. I think there is great likelihood. The girls will escape and the poor people will suffer. The punishment too is very heavy.

Q. The punishment could be reduced. It could be adjusted on a sliding scale according to the age of the girl. Would you like that?

A. We will have a number of gradations. From 13 to 16, 16 to 18, 18 to 22 and so on, there will be different punishments.

Q. If Graded punishment according to the age of the girl is awarded in England why should it be considered ridiculous here in India? Even here we already have graded punishment as far as marital relations go. We can have the same in extra-marital cases.

A. I say the higher the age of the girl the greater the chances of the crime going undetected.

Q. Do you approve of the Prostitution Acts of Calcutta and Bombay whereby girls of below 16 are prohibited from being prostitutes?

A. I approve.

Q. Don't you think that in their case there is more chance of the man being decoyed, deceived and cheated?

A. There may be cases. I am sure however that in respectable society there is very little chance of girls decoying boys.

Q. Any way you agree to raising the age to 16 but are doubtful about raising it higher than that?

A. Yes.

Q. Even with less punishment you won't have it?

A. I think an uniform law is better.

Mr. Mudaliyar: Have you taken any part in politics?

A. I have in my own humble way.

Q. What is your objection to the Legislative Council passing an Act like this?

A. As a form of remedy to cure social evils I am opposed to legislation. But when a legislation of that kind does come before me I will certainly think about it on its own merits.

Q. Are your objections not connected with the constitution of the Councils?

A. I never said that.

Q. In any part of the country?

A. I do not take upon myself the responsibility of speaking for other provinces. I am only speaking about my own province. I made it quite clear that I did not take upon myself the responsibility of talking about Bengal, Madras or other provinces.

Q. Are you aware that in this province marriages take place at the age of 5 or 6 and at no age?

A. Yes.

Q. Are you aware that among the Mahars marriages take place when the baby is 6 months or is still in the womb?

A. But none has come to my notice. It might be happening. They are so rare that much need not be made of it.

Q. But none has come to your notice, how can you say they are rare?

A. None has come to my notice because they are rare.

Q. What opportunities have you had of moving with the depressed classes in the mufassil?

A. I have got friends in the depressed classes, I am supporting a school of depressed classes, I move amongst them, I work amongst them.

Q. Have you attended any marriage of a depressed class man?

A. Yes.

Q. What have you found the age of the couple generally to be?

A. The marriages I attended were fairly matched. In one marriage that I attended the boy was about 22 and the girl was 16. Another marriage took place in Poona in which case also the couple was fairly advanced.

Q. May I take it also that cases of pre-puberty consummation have very rarely come to your notice among the Mahars particularly?

A. Among my own section the cases are absolutely rare. Among the Mahars, I don't know.

Q. Do you say they do not occur or you don't know?

A. I don't know.

Q. Have you heard of any such cases?

A. No.

Q. In any case consummation before 13 does take place in some cases. Law or no law it does take place. Is it not?

A. Yes.

Q. That is to say consummation follows soon after marriage in a large number of cases?

A. Yes. In about 20 per cent. of cases it happens.

Q. Among all classes?

A. I am talking of my class.

Q. What about other classes?

A. I don't know.

Q. May I take it that your class is a fairly advanced class?

A. It is.

Q. And 20 per cent. in your class have consummation before 13 within a few months or weeks after puberty?

A. Yes.

Q. May I take it you consider that to be a fairly undesirable state of affairs?

A. I think it is an undesirable state of affairs so far as it goes.

Q. Your remedy for that is education. Do you think education will bring about the desired result?

A. Yes.

Q. What kind of education are you talking of?

A. I am talking of high school and college education.

Q. How long do you think it will take before the entire country, every girl and boy receives high school or college education? Do you think it will ever come about?

A. I am sure it will come about. I don't mean that every individual will receive that education.

Q. Every family you mean?

A. I don't mean every member in a family. The fact is that people are appreciating the advantages of education, whether it is elementary education or whether it is high school education.

Q. Are you fairly certain that given this education these reforms are bound to follow?

A. I believe so.

Q. Are you aware that there are large communities which are very highly educated and which are supposed to be most intellectual practise this? Are you aware of the custom of Brahmins of Southern India?

A. No.

Q. That is the most educated and at any rate supposed to be the most intellectual community. Among them there are double graduates who practise pre-puberty marriage and post-puberty consummation. Do you still think that education will bring about this reform?

A. It has brought about that reform in every country. I have seen it in Poona, I have seen it at every other place and if education has not brought this benefit to my friends in the South I think there must be something inherently defective in the society.

Q. So far as the Age of Consent is concerned legislation is already there, for good or for evil.

A. I am afraid this legislation was not undertaken as a legislation for the Age of Consent. This was only interpreted as such. I think when this legislation was made it was not the Age of Consent that was behind the brains of the people who made it. I believe they wanted to protect the small little innocent girls from being ravished.

Q. That is what the Age of Consent is. That is exactly what it is. In 1891 the age was raised from 10 to 12 and in 1925 it was raised to 13. What objection have you got to raise it further?



A. I have no objection except the one that I mentioned about intra-marital cases. Even if you raise the age how will you prevent consummation when the husband and wife are living in the same house and under the same roof. Crime will take place in every house and at every age. The law will stand as a dead letter.

Q. As against that the obvious remedy is to postpone marriage which you are not agreeable to.

A. I am not agreeable to raise the age by law.

Mr. Yakub: Are you or are you not in favour of keeping the present provisions of Section 375, Indian Penal Code on the statute book?

A. I am in favour of those provisions being retained.

Q. Do you consider this problem as social legislation or as political legislation?

A. I do not consider it to be a social legislation.

Q. Then in your opinion legislation concerning matrimonial relations between man and woman is not social legislation?

A. I interpret it as criminal legislation, legislation to keep certain crimes down. But I don't mean social legislation and criminal legislation are two watertight compartments.

Q. Then are you in favour of having criminal legislation in the country?

A. Yes.

Q. Do you consider early marriage and early consummation a crime?

A. I think it is a bad thing.

Q. And also punishable?

A. Consummation below a certain age according to Section 375, Indian Penal Code is punishable and there it is.

Q. Is it a crime or not?

A. It is a crime, it is in the Indian Penal Code.

Q. Instead of fixing any age of marriage by legislation if legislation is made to the effect that a girl should not go to her father-in-law's house before a certain age would you like that?

A. That all depends upon what age you put down.

Q. Supposing we put it at 14, would you be satisfied?

A. I should not be very much dissatisfied but I would not be satisfied at all.

Q. Would you not object?

A. I would, in this way that legislation in itself would do nothing. I don't see how you can induce the father of the girl not to send her before a particular age.

Q. But do you think it will be a wise legislation?

A. It may be considered, it won't be wise.

Q. But you won't object to it on the ground of its being social legislation. Is it not?

A. Why do you say so? I am saying I would object to it; my objection would be a little lesser because the age is less. I did not say I would not object to it.

Q. I thought you were against social legislation.

A. I said so. I did not interpret it as social legislation. I said it was criminal legislation.

Q. And therefore you wan't object to it.

A. My objection does not prevail. Legislation is there.

Q. Are you in favour of keeping it on the statute book? There are certain objectionable legislations which one would like to be removed from the statute book?

A. I did not call it objectionable legislation.

Q. In order to gain the freedom of our country don't you think that the future generation of the country should be physically as strong as intellectually?

A. Yes.

Q. Would you not consider legislation which would bring about the result of making our future progeny physically strong, political legislation?

A. My whole contention is that that can be obtained without legislation.

Q. By what method?

A. By education. By people realizing the consequences of what they have been doing. I have been seeing before my eyes that the age of marriage has gone up to an appreciable degree.

Q. Not among the rural classes?

A. Even among the rural classes the thing is distilling down.

Mr. Kanhaiya Lal: Very slowly, very imperceptibly?

A. We may differ in the rate of progress. If you want it at mail speed, it may be slow.

Mr. Yakub: If it is considered that mere social propaganda will not have an appreciable effect even then would you not like legislation?

A. But is it proved that social propaganda has not had an appreciable effect?

Q. Do you consider the statement in the Central Provinces Gazetteer at page 25 correct or not?

A. I do not dispute its correctness.

Q. Then at this rate how long will it take before the desired result is achieved?

A. It all depends upon the earnestness which is put into it. It may take 10 years or it may take 20 years. I think we are progressing at a rate which brings us fairly ahead.

Q. Have you taken any action for educating people in this direction? Have you personally done any propaganda work?

A. Yes; I have done in my own way.

Q. Have you done propaganda asking people to raise the age of marriage?

A. I have not done propaganda with particular reference to the age of marriage.

Q. Do you know of any other leader of the country who has done such propaganda work?

A. People might not be carrying on this particular propaganda alone, but this has been one of the items in their propaganda generally. This has not been entirely one propaganda which has been concentrated upon.

Q. What is your opinion about the law of Sati? Is it a social legislation or a penal legislation?

A. I think it is a dead letter whether you keep it on the Statute Book or not. Nobody is going to revive Sati even if the legislation had not been there.

Q. How can you say that if there were no law nobody would revive it?

A. I depend upon the progress society is making.

Q. In the same way would you recommend that we might have a temporary law on the Statute Book so that it might serve the purpose of education and social reform?

A. I have never known of a law being a temporary law. Once it is on the Statute Book it is a permanent law.

Q. Do you not know that there have been laws like the Press law for instance and they have been removed from the Statute Book once the purpose has been served?

A. I know too much about the Press law.

Q. Now that power is coming more and more in the hands of the representatives of the people, do you think that legislation for a temporary period is desirable?

A. When I say that I do not consider that legislation is desirable, whether it is for a temporary period or permanently, my answer is there. I think it would not do any good.

Q. In what class would you put municipal legislation? Is it social legislation or criminal legislation?

A. I have defined my ideas about social legislation in answer to one of the previous questions. It depends upon the kind of legislation. For instance, I would not call sweeping gutters social legislation.

Q. Do you think that the proper age of consummation of girls is between 15 and 16?

A. I say that 3 years after puberty consummation should take place. That is my ideal. But the ideal might not always be reached. I consider therefore that at least one year should be given to the girl after puberty so that her physique might be developed.

Q. Why do you want to raise the age for extra-marital cases?

A. I say that 16 I do not mind. My objective is a sort of sliding scale. The higher the age the greater my objection. I have no objection to 16 because that is not very much beyond 14. But all the same my principal objection is there.

Q. As regards the cases under 375 and 376, Indian Penal Code are you satisfied with the procedure that is now followed in trying these cases by ordinary courts, or would you prefer that these cases should be tried by special tribunals called matrimonial courts consisting of a stipendiary magistrate and 2 non-officials who will be co-judges?

A. I should much prefer the latter, because what I have found from my experience as pleader at the bar that there is very great difficulty about proving the age of the girl especially when she is bordering upon the proper age. I think that in such cases non-official agencies would be able to scrutinise it much better and look at it from a broader point of view than officials. There is also the fact that sometimes officials are more concerned in getting a conviction.

Q. What is your opinion about registration of marriages? Would you like marriages to be registered when they are performed and that a free certificate to be given to the parties?

A. If it is calculated to do any benefit I have no objection.

Q. Would you approve that a free certificate should be given to the parents or the parties concerned after the marriage is registered?

A. I think it should be kept optional. Those who want a certificate may obtain it.

Q. Is the system of registration of births satisfactory here?

A. Yes.

Q. Are the names of the children given in the register?

A. No; but it is desirable to have the names.

Q. Do you approve that a birth certificate might be given to the parents so that it might be useful in proving the age of the child?

A. Yes.

Mr. Kanhaiya Lal: Do you think that there is a growing physical degeneration of the people?

A. I think so.

Q. Are you aware that there is a very high infant mortality in India, especially in the Central Provinces?

A. Yes.

Q. Are you aware that there is high maternal mortality in India, including the Central Provinces?

A. I am not aware of the maternal mortality. I do not know anything about the facts and figures.

Q. We have been told that in Sweden the maternal mortality is the lowest, and one of the reasons is that the age of marriage there has been fixed at 18 by legislation. Do you think that fixing the minimum age of marriage will help to reduce the maternal mortality?

A. I do not think it is a right thing to compare our statistics with those of Sweden. Very special circumstances may prevail in Sweden.

Q. They have beaten the whole of Europe.

A. I do not know that.

Q. If that fact has been established before this Committee, would it not be worthy of consideration in determining what remedy we should adopt in India?

A. It is certainly worth considering if that has been brought to your notice.

Q. Do you not yourself admit that injury has resulted from early consummation and early maternity?

A. Yes: in some cases.

Q. Do you not think that the matter has become urgent enough to require an earlier remedy than is possible by mere social propaganda?

A. I think it is being counteracted gradually by social propaganda and education. Some progress has already been made in this direction.

Q. Do you think that there has been any real advance amongst the lower classes who are the greatest sinners in this respect?

A. I think they are getting education. The more intercourse they have with cities, the more they get into touch with the civilised world, the more educated they become. I would not call a mere knowledge of reading and writing education. They see how people are raising the age of marriage, and they think they should do the same. Though the progress is slow, it is there. There is a corresponding response from the people who want their interests to be safeguarded. I am therefore optimistic about the best results.

Q. Has the age of marriage risen appreciably amongst the lower classes?

A. I do not profess to know about everything concerning them, but my impression is that it is rising.

Q. Have the number of child-marriages decreased?

A. Yes; child-marriages are being prevented. They are not as frequent and as usual as they were before.

**Written Statement, dated the 29th August 1928, of Rai Bahadur  
GANESHDAS KUNDANMAL, Amraoti.**

1. Yes. Because the Government unnecessarily interferes.

3. Yes. The Amendment of law made in 1925 had no effect in preventing or reducing cases of rape. I do not think that any such legislation will have any effect in preventing the offences of the nature. I am not in position to propose any measures to make the law effective.

4. The law in fact is not effective in putting off marriage beyond 13 or by postponing the consummation of marriage and it does not appear that it has any effect in stimulating public opinion in this direction.

5. Generally the girls attain puberty in this part of the province, at the age of 13 or 14 which varies according to climatic and other conditions such as the mode of living and the prosperity of the families of the girls.

6. In India cohabitation takes place immediately after the girl attains puberty whether such girls have completed the age of 13 or not. In certain caste there is no system of Gaona.

8. Gaona ceremony is performed in this part of the country.

9. No. If the wife becomes pregnant after a period of a year or two, after her Gaona then the progeny becomes sufficiently strong in health without injuring to the mother's health.

10. This depends on the educations, intelligence and surrounding circumstances of the girls.

11. I have no detailed information.

12. The early maternity is in my opinion not congenial to both, i.e., the mother and the child.

13. The general public is not aware of this legislation and I have no information that there is any desire on their part for improving the legislation further.

14. There is this tendency amongst uneducated women and not amongst educated ones.

15. There is difficulty to determine the age of the girls in connection with the offences under Sections 375, 376, Indian Penal Code. For this reason the exact age of the girl should be recorded in the registers of Patel's statistics and also in the vaccination registers giving the names after they are named.

16. No. whatever may be fixed as the Age of Consent the difficulty of determining the age remains as it is.

17. There should be separate offences and this should not be applicable to married couples. Section 375, Indian Penal Code, should remain as it is but Section 376 should be amended so as to exclude punishment in the case of married husband.

18. The cases relating offences by husbands should not be tried in open Courts, but privately.

19. I am unable to make any suggestions.

20. There is no necessity at all to amend the law on the subject and the opinion of the general public also does not favour any such measure.

21. On the progress of social reforms by means of education and social propaganda which has already been set afoot.

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### Oral Evidence of Rai Bahadur GANESHDAS KUNDANMAL, Amraoti.

(Nagpur. 26th January 1929.)

(Vernacular.)

Chairman: Are you a Maheshwari?

A. Yes.

Q. In Berar among Marwaries what is the age of marriage generally?

A. It used to take place at 8 or 9 but now it is 13.

Q. Is it the custom that marriage takes place before puberty?

A. Yes.

Q. If the girls pass that?

A. There is a sort of social ostracism.

Q. Is there no ex-communication?

A. No.

Q. Does consummation take place soon after puberty?

A. Yes, 4 or 6 months after.

Q. Is there no fixed age?

A. No.

Q. Is there a large number of widowers marrying young girls among Marwaries?

A. Only 3 or 4 per cent., not more.

Q. Have you seen a girl becoming a mother before 14?

A. Yes.

Q. Before 15?

A. Yes.

Q. Before 18?

A. Not before 13.

Q. What is the condition of the health of these girls as compared with girls who become mothers at 18?

A. Those who are fully developed get children at 14 but those who are weak do not get a child before 18.

Q. Have you seen any evil consequences of early consummation at that age?

A. No.

Q. Some witnesses have said that there is a large number of widowers marrying young girls?

A. The girl is generally 13 or 14.

Q. Have you seen any evil consequences in the case of these girls?

A. I have not seen nor have I heard.

Q. What have you seen? Are most of the children strong or (most of them are) weak?

A. It depends upon the feeding of the children.

Q. But Marwari is a rich class, there is no question of ill feeding.

A. There are cases where sufficient nutrition is not available.

Q. Do you know anything about villages?

A. I know more about villages than about towns.

Q. Among them excepting the Marwaries do marriages take place early?

A. Among the Malies marriages take place at 6, among the Kunbis they take place at 13 or 14, among the Telies they take place at 8 or 9, and among the Kushties marriages take place at 3 or 4.

Q. Have you heard of cases of children being married in the womb?

A. No.

Q. Is there a custom of Goana and if so after how many years does it take place?

A. It takes place after puberty. Goana is called "Shantik". The girl is sent after the Shantik ceremony.

Q. Have you seen any evil consequences among girls who become mothers at 14 or 15?

A. No. When there is not sufficient to eat the evil consequences follow.

Q. Among the Kumbis also have you not seen any evil consequences?

A. No.

Q. Why are you against this legislation?

A. Firstly, I see no evil consequences as a result of early consummation and secondly I think there will be great trouble to the people as a result of this law. There is a danger of the girls going wrong. Then the people don't know the law.

Q. Once a man is punished will it not have a deterrent effect on others?

A. Then so many more jails will be required.

- Q. Do you think the law will be broken if the age is fixed at 14?
- A. The people will break it.
- Q. There will be the fear of being sent to jail?
- A. In spite of that the law will be broken.
- Q. Have you got the custom of 'Punar Bibah'?
- A. No.
- Q. Have you got a large number of widows below 14 or 15?
- A. There is a number of them.
- Q. How do you protect them from going wrong?
- A. They spend their time in studying religious books and offering prayers to God.
- Q. Is there any danger of their going wrong?
- A. Some go wrong and some do not.
- Q. Does a greater number of them go wrong or a greater number remain chaste?
- A. More go wrong. There is no custom of widow marriage. Even married girls go wrong.
- Q. Has any conference been held of the Maheshwaris where this question of the age of marriage has been discussed?
- A. No. There was a resolution that marriage should not take place before 13. All considered marriage before that to be bad. But that is not practised.
- Mrs. Nehru: How do you think that there is dissatisfaction with the present state of law? Have you seen any man getting annoyed over it?
- A. There is dissatisfaction.
- Q. Then do you want that consummation should take place at any age?
- A. There should be no law.
- Q. Have you seen any man being punished because of the breach of this law?
- A. I have not.
- Q. Does consummation take place soon after Goana?
- A. The Shantik ceremony takes place at the girl's place and then the girl is sent away. Goana is merely sending away the girl.
- Q. Is there a custom of "Ratjagar" in your part of the country according to which people keep up the whole night and make the newly married couple sleep in the same room?
- A. No. A 'murti' however is printed on the wall and a cocoanut is placed before that and worship is done. There is no custom like 'Ratjagar' in these parts.
- Q. Do you want to repeal the present law?
- A. Yes.
- Q. Have you heard of cases where the girls have died as a result of early consummation?
- A. I have not.
- Q. If we tell you that this happens will you agree to keep the law?
- A. Consummation before puberty is considered very undesirable.
- Q. Should there be a law to prevent that?
- A. People are already doing that, there is no need of a law.
- Mr. Kanhaiya Lal: Are the children of the Marwaris strong?
- A. That all depends upon the feeding. Some are strong and some are weak. This applies both to girls and boys.
- Q. Are you prepared to agree to what Sushrat says regarding this question?
- A. No.

Q. Will you take the authority of Vag Bhatt?

A. No.

Q. You don't accept the authority of Ayurvedic shastras.

A. No.

Q. Do you know that out of 100 children born about 25 die and you think that there should be no remedy for that?

A. Some help should be given to the poor who die of poverty.

Q. But many children die at the time of birth. With them it could not be a question of food?

A. When the mother does not get enough to eat how will she be able to keep the child.

Q. The medical evidence is that if a child is born at a very young age there would be a shortage of milk at the mother's breast?

A. It is all because of poverty.

Q. Have you seen any cases of mothers dying at the time of childbirth?

A. Yes.

Q. Are the deaths due in many cases to early consummation and early maternity?

A. The reason is not the birth of a child at an early age.

**Written Statement, dated the 11th August 1928, of Mr. L. K. OGLE,  
M.L.C., Hindu Missionary Boarding, Amraoti.**

1. There is no dissatisfaction with the state of the law as contained in Sections 375 and 376, because girls under 13 who are married and the girls under 14 who are unmarried are already protected by the above sections.

2. There is no public demand to change the present Age of Consent and in absence of public opinion in social matters, no change in existing law is necessary.

5. Girls attain puberty usually at the age of 13 to 14. In rich classes puberty is attained at an age little more than in poorer classes.

6. (1) No.

(2) Yes.

(3) This depends whether the girl attains puberty before she completes 13 years.

7. Consummation of marriage at puberty is due to religious injunctions as laid down by Shastras, penalty for its breach is committing of sin by its non-performance.

8. Garbhadan ceremony coincides with the consummation of marriage after the attainment of puberty before 16 days.

9. Puberty is not a sufficient indication of maturity and a period of at least one year should elapse between attainment of puberty and consummation of marriage. This will entail no injury to her own health and that of her progeny.

10. I am of opinion that the girl should be at least 16 years old before she can give an intelligent consent to cohabitation. Because till she is 16 her native intelligence is not sufficiently developed so as to make her realize the consequences.

12. Early consummation and early maternity have brought about maternal and infantile mortality and have brought about in its wake generation which is undeveloped and degenerated.

13. No.



14. Not in a position to reply.

15. The chief difficulty is want of reliable record showing the date of birth of the girl. Another difficulty is extreme uncertainty that is attached to medical opinion in such cases.

16. The same difficulty will be continued even if the age be raised to 14.

17. Marital and extra-marital offences should be divided so that marital offences should have greater punishment than for extra-marital.

18. No difference.

19. Safeguard will be the creation of a strong public opinion against offences of this kind.

20. I am of opinion that legislation fixing the minimum age of marriage will be more effective although the public in my part of country will not brook the interference by legislation in matrimonial affairs.

21. I rely on education and social propaganda as a means to secure the object in view and for this purpose a separate department and the public health officer in each province be organized.

### Oral Evidence of Mr. L. K. OGLE, M.L.C., Representative of the Depressed Classes, Nagpur.

(Nagpur, 26th January 1929.)

(Vernacular.)

Chairman: What caste are you?

A. I am a Mahar.

Q. Are you a resident of Berar?

A. Yes.

Q. Do you know anything about villages?

A. I know both about villages and towns.

Q. At what age do marriages generally take place in your community?

A. Between 5 and 14.

Q. Does marriage ever take place after puberty?

A. Sometimes it does. There is no rule that it should take place before puberty.

Q. Have you seen any girl becoming mother at 13?

A. No.

Q. At 14?

A. Yes.

Q. At 15?

A. Yes.

Q. At what age do the girls attain puberty in the villages?

A. Between 13 and 14.

Q. Have you seen any evil consequences following in cases where girls become mothers at 14 or 15?

A. There are bad effects.

Q. Have you seen children and mothers dying?

A. Yes.

Q. Can you give any details of such cases?

A. I have not seen any case last year. Before that year I remember one case.

Q. If you don't know of any instances how do you say that evil consequences follow early consummation?

A. I don't know of any instances. Amongst the Maharas there are marriages and consummations below 13. In such case I know wrong is done both to the girl and her progeny.

Q. Do the Mahars in the villages get enough to eat?

A. Yes.

Q. Both men and women?

A. Yes.

Q. Do they not die of economic causes?

A. No. The people are not so poor.

Q. Do you know anything about cities?

A. Yes.

Q. Is the same custom prevalent here?

A. Yes

Q. Among what classes is this custom prevalent?

A. Among all the depressed classes this is the custom.

Q. What are the depressed classes?

A. Mahars, Manga, Dohar, Bhangi.

Q. Are you in favour of legislation for remedying the evils?

A. Yes.

Q. Why are you in favour of legislation?

A. People won't marry early and the evil consequences will be stopped.

Q. The people say that this is a long established custom and there will be agitation if the law is passed. What do you think about the depressed classes?

A. They will be upset to some extent. The educated know that there are evil consequences of early consummation but the uneducated don't know.

Q. Do you think inspite of their unwillingness to take the law there will be some good done?

A. Yes.

Q. Do you think that the law will be obeyed?

A. It will be obeyed.

Q. Out of the two laws the Consent Law and the Age of Marriage Law which would you prefer?

A. The Marriage Law.

Q. Do you want both?

A. Yes.

Q. But you say the people will be upset and will consider it as an interference in their domestic affairs?

A. Yes.

Q. Inspite of that there should be a law?

A. Yes.

Q. Do you think the evil is so great?

A. Yes. For every change there will be some dissatisfaction. We should ignore that for the general good.

Q. You say consummation takes place before 13. Are there many cases?

A. There are many cases in the Mahar community.

Q. That means the law of 13 is broken?

A. It is broken.

Q. Are cases not brought to light?

A. No.

Q. Is that why you are in favour of marriage law?

A. Yes.

Q. What age would you fix for marriage?

A. 14.

Q. For boys?

A. 18.

Mrs. Nehru: Do you think that the marriage law will be taken as being against religion?

A. Yes.

Q. The Mahar community will also think so?

A. Yes.

Q. Among the Mahar community is marriage before puberty considered Dharma?

A. Yes.

Q. Do the women realize that early marriage is an evil?

A. No.

Q. Has any propaganda in the form of lectures been done against early marriage?

A. Yes.

Q. By the Mahar leaders themselves?

A. Yes.

Q. Was any conference held?

A. Two years back a resolution was passed.

Q. Was any age fixed?

A. No age was fixed but early marriage was condemned.

Q. Has any discussion taken place about Sardar's bill?

A. No.

Q. Do the people know that there is a bill like Sardar's bill?

A. The educated know.

Q. Do the people know the Age of Consent Law?

A. The educated know. The newspaper reading public know it.

Q. What is the condition of education of women among the Mahars in Amraoti?

A. A school was opened 5 or 6 months back. Two or three girls are reading in the Normal classes also. The Mahar leaders started a school which was taken over by the municipality.

Q. Do the girls go to Municipal schools?

A. No.

Q. Why?

A. The school is at a distance. Wherever there is a woman teacher she goes to bring the girls from the Mohalla to the school and there the girls go to the school.

Q. Is there a custom of widow marriage among you?

A. There is.

Chairman: Do you think if the age of marriage is fixed at 14 there is a danger of the Mahar girls going wrong?

A. There is no more danger than at present.

Mr. Kanhaiya Lal: Would you like to have a system of registration of marriages giving the names and ages of the marrying parties?

A. Yes.

Q. On whom would you place the responsibility of report?

A. On the parents or guardians and also on the priest.

Q. But the priest will say that he has come only for the 'dakshna' and does not know anything about the ages of the couple?

A. They try sometimes to hurry up the marriage.

Q. Do you want that those priests only who abet marriages should be made responsible?

A. Yes.

Q. If the age of marriage is fixed at 14 would you like to have the same age for consent law also?

A. It should be one year after maturity, i.e., 15 years.

### Written Statement, dated the 28th August 1928, of Rao Bahadur SADASHIV JAIRAM, 'M.A., 'Mahamahopadhyaya, 'Nagpur.

1. There does not seem to be any sign of dissatisfaction. No remarks, either in favour or against, are heard in the society in which I move. The reason is that during the last decade, social reforms have made rapid progress, and female education also has greatly advanced. The consequence has been that 13 has automatically come to be the age of marriage. Now a days, hardly any girl is married before 13 owing to the above reason, and owing to other circumstances such as poverty of parents and difficulty in obtaining a suitable match.

2. It is wise to retain the law of Age of Consent as it is. Any advance on the present law will come upon the minds of the people too soon, and cause dissatisfaction. It will be like throwing a stone in a calm lake, moreover, I cannot see how raising the Age of Consent will serve the purpose of minimising offences of this nature.

3. These crimes are rare in my part of the country. There may be some in the low classes, but I am not cognisant of any.

I can suggest only two measures to minimise these crimes:—viz., (1) Spread of education and (2) Exemplary punishment.

4. As said above, hardly any girl is married before 13. The change is automatic. Law has not much to do with it. I have heard of no case in which consummation of marriage was postponed for fear of breaking the law. It might have been for some other reason. And there is no cause to fear, since girls are generally married now a days at or after 13.

5. In my part of the country, the age of puberty ranges from 12 to 15, cases of 12 and 15 are rare. Generally 13 or 14 is the age of puberty. This differs in different cases according to the constitution of the girl, and the way in which she is brought up. Food, air, and locality are also the contributory factors.

6. (1) No.

(2) Yes. Because the Shastric injunction enjoins the performance of the consummation ceremony soon after puberty is irrespective of age.

7. I know of no case of this nature coming to Court. Religious injunction enjoins consummation of marriage at puberty but never before puberty. All the Smritikaras are unanimous on this point, as far as I know. 'Manu' says:—

“ऋतुकालाभिगामी स्यात् स्वदारःनिरतःसदा”.

Translation.—He, solely devoted to his own wife, shall cohabit with her at ऋतुकाल or period of the appearance of menses.

The period of menses given by the Smritikaras is 16 days. Yagnyavalkya says :—

“षोडशर्तुनिशाः स्त्रियां तस्मिन् युग्मासुसंशेत्”

The commentator Vidnaneshwar thus explains this injunction :—16 days from the first appearance of menses is the period known as ऋतुकाल । The time characterised by the condition fit for the bearing or retaining of foetus is called ऋतु or puberty. During that period the husband shall sleep with his wife on even nights.

Parashara lays down penalty for the breach of this injunction :—

“ऋतुस्नातांतु यो भार्यां स्वस्थः सलोप गच्छति ।

वालगोधापराधेन विध्यते नात्रसंशयः ॥”

Translation.—He, who does not (go to) cohabit with his wife when she has bathed after menstruation with a calm mind, shall be guilty of an offence which one would commit by killing a child or a cow. There is no doubt here.

8. Since this ceremony is enjoined by Shastric injunction, it is performed in all orthodox families. It coincides with consummation of marriage, and is performed within 16 days from the first appearance of menses. If any untoward event happens in the family, such as birth or death, etc., the ceremony is postponed to the next auspicious day to be settled by an astrologer, but never beyond a year.

9. Yes. Puberty itself means full development or maturity; and the Smritikaras have held that as the natural index of the consummation of marriage.

I think that the consummation of marriage at puberty is not the cause of injury to the health of the girl or to her progeny. The real cause is over-indulgence in season and out of season.

12. I don't think that consummation of marriage at puberty is the cause of maternal and infantile mortality or the physical and mental deterioration of the people. Ancient history of the Hindus shows that ancient people who abided by religious injunctions were both physically and intellectually strong, and lived for the full span of human existence.

14. Consummation of marriage at puberty is enjoined by religious injunction, whether women favour it or not. But they do not like unnecessary postponement.

15. The only remedy of determining the age of girls is the maintaining of registers of vital statistics always ready for reference.

17. Yes. Extra-marital and marital offences should be treated as different offences, because they so vastly differ from each other. In the former, there exists no tender relation or for the matter of that no relation at all, between the parties, and the intention is strong and devious, while in the latter, there exists the sacred relation of husband and wife whose interests are wedded together for life. Here the intention of doing injury is absent. The maximum punishment for the offences of the first kind should be exemplary—as high as possible, but short of death; while that for offences of the second kind should be a fine amounting to not more than Rs. 500.

18. Offences within marital state should be tried in-camera and not in open Court for reasons which are quite evident. Offences without the

marital state should be tried with the help of a jury or assessors as the case may be, with a view to give the benefit of doubt to the offender.

20. I think both the alternatives will not be liked by the people, as they run counter to the religious injunctions and time-honoured custom, moreover no penal legislation on these two points is necessary; because time is doing the work of changing the views of the people in the desired direction. As said above, the rapid progress of social reforms and the great strides that female education is taking in the country will themselves bring about the contemplated change in near future, such changes are more permanent and cause no dissatisfaction when they come from within than when they are forced upon the people by law. If a penal legislation were made, the solemnly declared policy of Government of non-interference in religious matters will be shaken.

21. I would prefer the latter alternative on merit.

### Oral Evidence of Rao Bahadur SADASHIVA JAIRAM, M.A., Mahamahopadhyaya, Nagpur.

(Nagpur, 26th January 1929.)

*Chairman* : I understand that you do not want any legislation.

A. I do not.

Q. Do you think there has been deterioration in the modern girls during the last 30 years?

A. It has not been my business to look to these things. It is possible that there has been deterioration not only among girls but also among men.

Q. You say people formerly lived according to the religious injunctions and they were physically and intellectually strong. Is it not?

A. Certainly.

Q. Do you think modern people live according to those injunctions?

A. No. Some do and they live for a long period.

Q. Do you think the majority don't live according to those injunctions?

A. Majority do not.

Q. Were there certain prohibitions in the Smirities about cohabitation which left only 6 or 7 days in a month for cohabitation?

A. Yes.

Q. Do you think that modern young men will follow those injunctions?

A. They should, I don't know whether they will.

Q. Do you expect that your grandsons or your friends' grandsons will follow those injunctions?

A. Not quite to the letter.

Q. Are you aware of any cases of girl mothers below 13?

A. I have not seen but I have heard.

Q. What have you heard?

A. That a girl of 13 or 14 has become a mother.

Q. Have you heard of their physical condition?

A. No.

Q. Do you mean to say living in a society as you do, you have not come across any cases of early consummation and the evil consequences of that?

A. I may have seen some cases and have heard of so many more but I could not say exactly about their condition of health after they gave birth to the child.

Q. Are you aware of the fact that there is a certain amount of mortality of mothers and children amongst us?

A. Yes.

Q. Do you think that this is on the increase during the last 30 years?

A. The child mortality is on the increase as statistics show.

Q. Is mother mortality also on the increase?

A. Not so much.

Q. What do you attribute the child mortality to?

A. I think it is on a greater scale amongst the poorer classes and not so much in higher classes.

Q. Do you consider the Brahmin community as a poor community?

A. Some Brahmins are poor. They don't get enough to eat good food.

Q. Would you say that there is such a large proportion who don't get enough to eat good food?

A. I think most of the middle class Brahmins come under this.

Q. What percentage would you put them at?

A. About not less than 30 per cent.

Q. We will talk of the 70 per cent. now. Amongst these 70 per cent. have you heard of child mortality or not?

A. I cannot particularly say now if you ask me a particular case, but there has been child mortality generally.

Q. Now we are trying to exclude the cause of poverty which you confined to 30 per cent. I want you to tell me if possible about the condition of the remaining 70 per cent. In the 70 per cent. there is enough to eat. Is it not?

A. Yes.

Q. Do you find child mortality amongst them also?

A. Yes.

Q. What do you attribute it to? Do you attribute the child mortality amongst them to poverty?

A. No.

Q. Then what do you attribute it to?

A. I attribute it to perhaps the illhealth of the parents which is due to over indulgence because in rich families there is ample money and they spend it in any way they like.

Q. Is not early consummation one of the causes for high infantile and maternal mortality?

A. Our Shastras lay down puberty as the condition of maturity and no Garbhadan ceremony can take place before puberty and so there is no such thing as early consummation.

Q. A girl may attain puberty at 12 and if you allow a period of six months or one year to intervene then consummation may take place before 13. Won't it?

A. Yes. I am not laying so much stress upon the age as on the condition of puberty.

Q. Now take the case of a girl who attains puberty at 12. Do you consider that in the interests of herself and her progeny it is proper that she should be a mother before 13? Can she safely become a mother?

A. Such cases are very rare but I won't call it good.

Q. What age do you suggest as the safe age for a girl to become a mother so that she may not suffer and her children may not suffer. Would you accept the authority of Shushrut and Baghbat.

A. This is a question of Dharma Shastra and Shushrut and Baghbat have no concern with Dharma Shastra at all.

Q. Are you aware of the fact that Shushrut and Baghbat lay down 16 for girls as the fit age for consummation and 24 or 20 for men?

A. Yes, but the Smritikaras also have given their consent to this opinion as an opinion only.

Q. Do you accept this authority that it is good for consummation?

A. As a Dharma Shastra this authority won't be accepted. I cannot accept it.

Q. What authority do you accept then for consummation?

A. I think the Shastric authority can be accepted. Yagnyavalkya is the authority. I will not accept the Ayurvedic authority because there is a decided Shastric rule "rithu kaleh.....".

Q. If a girl attains puberty at 11, would you like that she should be consummated before 12?

A. Whether one likes or not it is an injunction and the Shastra must be followed.

Q. Is this your opinion in this 20th century?

A. Yes.

Q. Do you think that modern conditions of changed circumstances require for the strengthening of our girls and boys that their consummations of marriage should take place at a late age? Do you not think that consummations of marriage should take place at a late age considering the deterioration of boys and girls?

A. I don't think that deterioration is due to this cause only.

Q. Is it one of the causes?

A. It may be one of the causes but not in all cases. There are so many other causes acting upon both males and females for deterioration. Early consummation as you call it is not the only cause for physical deterioration.

Q. I never said that. I say whether it is one of the causes or not.

A. Yes, it is one of the causes.

Q. You say that the marriageable age is going already. Is it going up beyond puberty?

A. It is going up according to the times and it is also going beyond puberty.

Q. Do you know of any cases to your knowledge where girls have been married after puberty?

A. I know five or six cases, but these marriages have been condemned.

Q. In what way have these marriages been condemned? Were they out-casted?

A. No.

Q. What percentage of people do you think have gone in for these marriages?

A. Persons of reformed views only have gone in for these higher marriages.

Q. But they are a few. Are they not?

A. But their number is going up.

Q. Is not the orthodox community having pre-puberty marriages in a large number?

A. It may be more. Unless I have the statistics before me, I cannot answer this question definitely.

Q. You say that the marriages are going up. To what extent are they going up?

A. They are going up to 13 or 14.

Q. But then not many people do it. Do they?

A. Those persons who are forced by circumstances do it.



Q. Do you think it imperative under a religious injunction to have consummation of marriage on the 16th day after the first menses?

A. Within the first sixteen days it must be performed.

Q. Do you consider this recommendatory or imperative?

A. Imperative.

Q. I want to ask you in how many cases consummations of marriage are kept off beyond 16 days?

A. Unless there are untoward circumstances in the family it is not kept off beyond 16 days. It is performed within the first sixteen days.

Q. Is not this rule broken in a large number of cases?

A. No, it is not broken. It is performed within the first sixteen days.

Q. Would you say that this rule is observed by 80 per cent. of the people?

A. I think all orthodox families do observe this rule. Unless there is any prohibiting circumstance, the Garbhadan must be performed within the first sixteen days.

Q. 'Must be' is alright. I am asking you about the practice. Do the orthodox families observe this rule?

A. Yes.

Q. Will you say that 80 per cent. of the orthodox families observe this rule.

A. I cannot tell you the percentage. I can only say that in orthodox families this is done.

Q. Can you not say how many orthodox families there are?

A. No, I cannot say that definitely.

Q. You however seem to think that an advanced age for maternity now is desirable.

A. Yes.

Q. How far do you think you should extend the age for consummation of marriage?

A. I would go only by the limit laid down by Shastras say 14 years. Puberty of girls varies from 13 to 15.

Q. Would you like puberty as the test?

A. Yes, I would like puberty as the test.

Q. Do you think that there is a large number of Shastric injunctions which even an old gentleman like you have to break?

A. Yes, but not the principal ones. For instance performing the Shraddha ceremony of the departed ones should be performed and we don't break it.

Q. I will tell you one injunction which is very much broken by the young men of this period, i.e., observing Brahmacharya, till one's education is finished. Do you not think that in a large number of cases this rule is broken?

A. Yes, the period is broken no doubt because people have become short-lived in these times and therefore the Rishis have brought down the period of education within a very small scope say to a period of three days.

Q. Which Rishi has brought down this?

A. This is the custom.

Q. Can you suggest any remedy by which pre-puberty marriages may be permissible but maternity will be postponed till after the girl is 15 or 16 years old? On the one hand there is the Dharma Shastric injunction for pre-puberty marriages and on the other hand there is Auyurvedic authority which says that consummation shouldn't take place before a girl is complete 16 otherwise the children will suffer and the mother will suffer. I want you to find if possible a way to reconcile these two opinions. So is there any method which you can suggest by which we can have pre-puberty marriage

at any age but that consummation of marriages should be postponed beyond 16?

A. I think it can be done but then we shall have to get the majority of the public opinion of the first three regenerate classes on this point.

Q. But apart from their consent can you suggest any means by which this can be accomplished?

A. May I say one thing which is as follows.

Q. Yes. What are you going to say?

A. In the letter that this committee sent to me it was stated that the question of marriage does not come within the purview of this committee;

Q. It directly does not come but I have left it to the witnesses to say if they so like that they would prefer that bill to this.

A. But the principal thing is the Age of Consent.

Q. But now the Age of Consent people say that the Garbhadan ought to take place a little later. The medical authorities seem to be in favour of them. Now we want to reconcile if possible the orders of the Dharma Shastras and the Auyurvedic injunction. Can you suggest any method for this?

A. I think 14 should be kept as the limit for marriage and for consent. Let the two coincide.

Q. Do you think that if 14 is put as the limit for marriage and for consent, people would like it?

A. This is my personal opinion.

Mr. Kanhaiya Lal: What was the age of marriage during the Vedic period of girls and boys? Were they not married when they were grown up?

A. Yes, they were married when they were grown up but the rules about marriage were very loose then.

Q. Can you tell us when this practice requiring marriage before puberty was introduced?

A. This began when the Nibandhas were written which were written with the full view of the Smritis before them.

Q. Do you think that the rule requiring marriage before puberty is only a recommendation for the best form of marriage?

A. Yes. The Smritikaras lay down that one who marries after puberty becomes a 'vrishali.'

Q. So that marriage after puberty is not forbidden. It is only considered inferior. Is it not?

A. Yes, it is considered only inferior and it is not forbidden.

Q. Do the Shastras lay down that in case of puberty a prayaschitt may be done and the marriage may be celebrated?

A. Yes.

Q. Do the Shastras also lay down that when during the celebration of the marriage a girl attains puberty, the marriage can be completed after performing the prayaschitt?

A. Yes.

Q. So that our Shastras contemplate marriages after puberty as the second best. Is it not?

A. Yes.

Q. They are not illegal. Is it not?

A. They are not illegal but they are considered as the second best.

Q. Similarly I should like to know whether the provision requiring that a husband should approach his wife during menses is also not recommendatory?

A. It is not recommendatory, but it is mandatory.

Q. Would this apply to a girl who refuses?

A. This question doesn't arise in the case of a Hindu marriage at all.

Q. You say that this rule is mandatory. If this provision is mandatory, how can it be enforced in the above case?

A. This provision is mandatory both on the girl as well as on the man.

Q. Is this provision mandatory if a man has got already sons?

A. The meaning is this that Hindu Shastras lay down a great stress upon a man's having a son, and it is said that a sonless man has got no place in the heaven. So there is every effort to get a son both for the sake of performing the ceremonies after his death and for the sake of inheritance. Therefore this rule has been made mandatory so that no opportunity should be missed.

Q. May I take it that this provision is mandatory even if a person has got sons?

A. I cannot answer this question offhand. The commentator perhaps seems to think that only in the case of a sonless man this rule is mandatory, but I cannot give my opinion unless I see the books.

Q. In the same chapter Manu lays down that a man shouldn't marry a woman who has got no brother. Do you think that this rule is mandatory?

A. Yes.

Q. In the same chapter Manu lays down that a man shouldn't marry a woman who is very talkative. Is this also mandatory or only a recommendation?

A. These are all recommendations.

Q. Why do you class one as mandatory and the other as recommendatory?

A. Because they have been so explained by the commentators.

Q. But how do you distinguish which are mandatory and which are recommendatory. Don't you think that the rule about approaching the wife during the menstrual period, is only recommendatory?

A. No, that is not recommendatory. I say that during the Upanishad period the marriage rules were not so strict. These rules, I think, were systematized first of all during the Sutra period and then these were extended by the Smritikaras.

Q. Do you not think that all the rules laid down in this chapter are either recommendatory or all mandatory?

A. What is explained by the commentator as mandatory is mandatory and what is explained by the commentator as recommendatory is recommendatory.

Q. Can you tell us the use of differences?

A. When a thing has not been stated before and when it is stated for the first time it is called a *vidhi* and is mandatory but when the thing has been mentioned before and some are to be omitted then it is called a *niyama*.

Q. Will you call this rule about approaching the wife a *Niyama* or a *Vidhi*?

A. It is a *Niyama Vidhi*.

**Written Statement, dated the 15th August 1928, of Mr. ABDUL KADIR, Pleader, Amraoti.**

1. Yes, there is lot of dissatisfaction with the state of the law as contained in Sections 375 and 376, Indian Penal Code as they do not want that the husband should be accused of rape and that he should be punished for having intercourse with his legally married wife even if she is not full thirteen, as it is often seen that the girls of 12 years of age attain puberty and are in a very good state of health. In some very exceptional cases they reach puberty even when they are 9 or 10. It depends upon the circum-

stances of the family to which they belong. Besides if the husband who has religious sanction to have intercourse with his wife after puberty, were to be punished for consummating his marriage when his wife is under 13, what good relations can we expect to exist between the pair afterwards? The husband will always be smarting under the feeling that his wife was the cause of his disgrace and there would be no love lost between the pair.

2. The law of the Age of Consent may be retained as it is at present because there is practically no diffidence in the discretion that a girl of thirteen and a girl of fourteen can exercise about her own well-being; as a matter of fact this sort of discretion is attained by girls only when they reach the age of 18 and 19. So there is no need of any advance on the existing law.

3. The crimes of seduction and rape are not frequent in this province and I do not think there has been any palpable effect produced by the Amendment of the law in 1925 raising the Age of Consent to 14 years. This sort of cases are few and far between already. The existing law is quite sufficient and I do not wish to propose any measure with a view to make the law more effective.

4. I do not think that the Amendment of 1925 had produced any effective result by postponing the consummation or by stimulating public opinion in that direction or putting off marriage beyond thirteen; on the other hand all communities take care before allowing consummation of marriage, that the girls are fully developed and also the boys, and they allow them to meet only when they are in a fit state of health and not before. So, I think there is no necessity for taking any steps to attain this object.

5. The girls in our part of the country generally attain puberty when they are between 12 and 14 years of age.

6. No community or class in this province allows cohabitation before reaching puberty. I believe the limit of 13 years is not always observed but in majority of cases puberty is reached in 13 years, and cohabitation takes place after puberty. I have not seen any such case in Court.

7. Yes, amongst some communities it is a religious injunction to have the marriage consummated soon after puberty and I do not know of any community which follows the practice of the consummation of marriage before puberty. Amongst the North India people it is said that when the Gowna is performed consummation must take place whether the girl reaches puberty or not.

8. Gowna is a name of the ceremony of consummation of marriage amongst the Northern India people and the people of the northern districts in Central Provinces. Garbhadan is a ceremony performed when the girl is put in the family way for the first time. The Kunbis of this province call Gowna ceremony the Shantik ceremony. The Mahars call it 'mood'. This is generally performed on the 4th day after the girl attains puberty. There is no day fixed for this ceremony amongst Muslims. The night on which the consummation of the marriage takes place is called Shabi-Zafaf and the consummation of marriage is called Khilwata-i-sahiha. There is no day fixed for it. When the parents consider their girl and boy quite fit and fully developed they bring about their meeting.

9. Attainment of puberty is a natural indication of the craving to have one's passions satisfied. The development of the girl after puberty continues till the girl reaches 20 years and in the case of a boy till he reaches 25.

10. Those that are precocious they may be able to give an intelligent consent to cohabitation with full realization of their responsibility at 13 and 14, but in majority of cases it is not possible before they attain the age at least of 18 years.

11. I have not come across with any such case or cases and I cannot furnish any details.

12. Early consummation and early maternity are not the only causes responsible for high maternal and infantile mortality. In majority of cases the people being illiterate do not know how to look after the infant and the mother and it is also not possible for many of them to get good nourishing food on account of poverty. In some places bad sanitation also produces very adverse effect upon persons in such a delicate state of health and the infantile population. High maternal and infantile mortality is also due to other results vitally affecting the intellectual and physical progress of the people, as stated above.

13. As education is advancing public opinion is developing in favour of the extension of marriageable age and the consummation age without having recourse to the hand of law. As regards the extra-marital cases I should think that the public are indifferent to them.

14. Yes, I think the general tendency of the parents with a few exceptions in this province is in favour of early consummation of marriage for their children. The educated people are against such a custom.

15. I think the proper and strict maintenance of birth and death registers should not present any difficulty in solving the questions about the age of the girls.

16. I do not think that the margin of difficulty in determining the age would be reduced or minimised if the Age of Consent is raised to 14 years. The only solution for this is the proper maintenance of the Birth registers.

17. Yes, I would separate the marital and extra-marital offence from each other. I would retain the punishment provided for extra-marital offence as it exists at present and would let off the culprits under marital head with a simple warning or a binding under Section 562 Criminal Procedure Code.

18. The offences within marital state may be made triable by a 1st class Magistrate instead of the Court of Sessions or the District Magistrate and in the Presidency towns by a Presidency Magistrate.

19. The only safeguard that I can suggest to prevent an improper prosecution and not to shield a real offender is the strict maintenance of birth and death registers beyond and besides whatever safeguards exist at present.

20. I do not think that the penal legislation fixing a higher Age of Consent would be more effective than fixing the minimum age of marriage but the fixing of age limit for marriages and making it penal to marry under a certain age would not be liked by the majority as they say that it is always difficult to secure matches and besides they do not consummate the marriage unless the girl reaches puberty and unless they see that she is fully developed.

21. I would rather depend upon the progress of social reforms by means of education and social propaganda, to secure the object in view than to rely on the strengthening of the penal law.

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### Oral Evidence of Mr. ABDUL KADIR, Pleader, Amraoti.

(Nagpur, 26th January 1929.)

*Chairman:* For how many years are you at the Bar at Amraoti?

A. For the last 30 years.

Q. You belong to the Sunni Jamat.

A. Yes.

Q. What is the marriageable age amongst the Muhammadans in the part of the country where you live?

A. Some of them marry at an early age while the majority of them marry after 14.

Q. The people who marry early, are they the lower class Muhammadans?

A. Both the lower and the higher classes marry early.

Q. Why do they marry early?

A. They marry early because it is difficult for them to find a suitable match if they allow an opportunity to slip.

Q. But do not the majority, as you say, marry after 14?

A. Yes.

Q. I suppose there is not much difference amongst the Muhammadans between the age of consummation and the age of marriage?

A. It is on account of this that they have to marry grown up girls.

Q. Is it necessary that a girl should have attained puberty before she can be married?

A. It is not necessary but it is generally done and I think even if they are married early, they are not allowed to lead the married life.

Q. Have you known of any girl mothers before they complete 14 years amongst Muhammadans?

A. I don't remember any.

Q. Have you seen of any girl mothers below 15 or below 16?

A. Yes, I have seen.

Q. Do you think that there is any deterioration in the modern Mussalman girls during the last 30 years?

A. There may be and I would ascribe it partly to purdah system.

Q. What are the other causes for this deterioration?

A. Of course, there is poverty.

Q. But in a good family there is no poverty. Is it not?

A. No, there is no poverty.

Q. Don't you think that the richer classes suffer more from deterioration?

A. I don't know.

Q. Don't you think that in villages where the Muhammadans lead a life of labour and have open air are better off than the city people?

A. I should think so.

Q. Do you consider that early maternity that is to say maternity before a girl is 15 is one of the reasons that lead to this deterioration?

A. It may be one of the reasons but not the sole reason.

Q. Do you consider this as one of the reasons for infant mortality and mother mortality?

A. With regard to the infant mortality I think they don't know much about hygiene and they don't know how to take care of the infant.

Q. Do you think that amongst those people that marry early besides the Muhammadans the law of the Age of Consent which is now standing at 13 is known?

A. Very few people know about this law.

Q. Have you reason to believe that amongst the classes that marry early that the law of the Age of Consent is broken?

A. I don't think that they commit a breach of the law knowingly.

Q. But as a matter of practice do they break the law where girls are married at the ages of 7, 8 or 9 and attain puberty at 12?

A. If they attain puberty at 12, I think they allow the husband and wife to mix together.

Q. You mean that consummation after puberty is common irrespective of the age. Is that what you mean?

A. Yes.

Q. You are apparently of opinion that the law fixing the minimum age of marriage would be more effective than the law of the Age of Consent? Is that your opinion?

A. I think it shouldn't be fixed and it won't be liked by the people.

Q. But you think that out of the two the law of marriage would be more effective. Is it not?

A. Yes, but I don't think that it will be liked by the people. But if we have correct register of births and deaths, I think it is bound to prevent marriages and consummations of marriage below 14.

Q. Have you got any ideas on the subject as to when does a girl really become fit for motherhood?

A. I don't know, but that depends upon her constitution.

Q. Have you reason to think that before puberty marriages are consummated amongst the lower class Muhammadans?

A. I don't think so.

Q. Do you know of any cases of widowers amongst the Muhammadans marrying small girls and evils having resulted from that?

A. I don't know.

Q. Do you think that amongst the Marwadis there is a good deal of early maternity?

A. I cannot say anything about them.

Q. Have you any knowledge of the conditions prevailing amongst the other communities besides the Muhammadan community?

A. I hear that in Northern India they perform the Gaona ceremony and as soon as the girl becomes of age, she is taken to her husband's house.

Q. What does happen amongst the Muhammadans in Berar? Does the Rukhsati ceremony take place immediately?

A. Yes.

Q. And this is done soon after puberty. Is it not?

A. Yes.

Q. Do you think that the Muhammadans would have very much objection if the marriage age is put at 14?

A. They don't like it at all because sometimes they marry their girls at an earlier age also on account of fear of losing the proper match.

Q. If a marriage law is enacted, what shape do you think the form of dissatisfaction would take?

A. What can they do against the Government.

Q. Is it on this account that you wouldn't like legislation because people don't like it?

A. Yes, and besides you prevent them from marrying at a time when they want to marry.

Mr. Kanhaiya Lal: In the Imperial Gazetteer of the Central Provinces, pages 25—26 it is stated that 11 per cent. of girls are married under 10 years of age, between 10 and 15 half the total number of Hindu girls are married, 20 per cent. of Animists and 27 per cent. of Muhammadans. The majority of the remainder get married before 20. Even in advanced countries like Egypt and Turkey where there is much education, the age they have fixed for marriage is 15 years. Having regard to all these considerations would you not recommend that there should be some legislation to prevent these evils which are injurious to girls and to their future progenies?

A. I think with the advance of education people are thinking of raising the age themselves.

Q. Amongst the educated classes there is a tendency to raise the age but amongst the lower classes education has not spread so much and it will take 50 years or more to raise the age of marriage. Is it not?

A. For the lower classes have propaganda work.

Q. But propaganda would delay matters considerably.

A. It should come on very slowly.

Q. Do you think that 14 would be practicable and people would obey it?

A. They shall have to obey it.

Q. What is the age that you have recommended for the Age of Consent inside marriage?

A. 14.

Q. Outside marriage?

A. 16.

Q. What is your idea about allowing exemptions in suitable cases. For instance if a man wants to get his two daughters married at one and the same time so that he could avoid double expenses he can apply to the Court and get the sanction for the same. Are you in favour of such exemptions?

A. It would be very difficult to get such exemptions.

Q. If he shows sufficient reasons, it might be granted. With such a provision do you think that this marriage law for which you have fixed 14 as the minimum age will work better?

A. Of course it would work better when there would be a provision but it will be very difficult to obtain the exemption.

Q. Would you recommend the District Judge to make such exemptions?

A. A first class Magistrate also will do, and a District Judge also will do.



## Written Statements of persons not orally examined.

**Written Statement, dated the 13th August 1928, of Rai Bahadur GOVINDRAO MANDLOI, Chairman, District Council, Nimar.**

1. As far as I recollect there was some agitation to bring the law so far as it relates to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code into line with the advance views which are prevailing regarding the marriageable age of girls which should either be raised to 14 or 16.

2. The present law of the Age of Consent as it stands needs modification in view of the fact that women folk are not capable of discerning at the age of 14 what would be the result of their action. It would be advisable to modify the present law.

3. Although crimes of seduction or rape are less frequent in this part of the country as compared with the other provinces, but cases do occur and some stringent measures are necessary to stop them altogether. It is not possible to state with any degree of accuracy whether the amendment of the law made in 1925 has tended in preventing or reducing cases of rape outside the marital state unless one has got statistics of the crimes committed before 1925 and after. However, this much is beyond doubt certain, that many cases of seducing girls improperly for immoral purposes in other provinces have occurred and Bombay is the centre for such nefarious trade. In order to make the law effective the Age of Consent should be increased and deterrent punishment provided for offenders and their accomplices.

4. Generally girls in this country attain the age of puberty at the age of 13 and in high class Hindus no girl below that age is allowed to co-habitate with her husband. But in the lower strata where illiteracy prevails the above custom is ignored and persons offending the law are rarely brought to book. Unless the marriageable age of girls is increased beyond 13 there is no possibility of the evil being eradicated.

5. Generally girls attain puberty at the age of 13. So far I am aware it does not vary according to castes, communities or classes of society.

6. In high class Hindus cohabitation with girls before puberty is uncommon. It might be common in lower strata where education has not made any progress. Cases of cohabitation before puberty or before the girl completes 13 years never come to court and would never come in future as the families of both the contending parties are likely to be lowered in the estimation of the public.

7. About 2 or 3 decades ago no sooner a girl attained the age of 8 she was married in accordance with the injunctions of the Shastras. Now-a-days even in conservatism and orthodox Hindu families no girl is married before the age of 13.

8. "Gaona" or "Garbhadan" ceremony is usually performed in this country. It is performed after the attainment of puberty and generally within 16 days of the first menses.

9. The attainment of puberty cannot be considered as a sure index of physical maturity to justify consummation of marriage. Generally the limbs of the girls are developed properly at the age of 16 and unless this age is attained which is after 2 or 3 years of puberty she cannot be considered to have fully developed for consummation without undermining her health and that of her progeny.

10. At the age of 18 a girl should be considered competent to give an intelligent consent to cohabitation with due realisation of consequences.

11. Cohabitation before full physical development of a girl has resulted in the death of many of girl by Phthisis. No details can be furnished as I am a lay-man.

12. Yes, I can boldly assert without fear of being contradicted that early consummation and early maternity are responsible for high maternal and infantile mortality. To some extent poverty of the people is also responsible as they cannot give proper treatment in such cases.

13. So far I know there is no development of public opinion in this part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of law in 1925. But in high class Hindus where education has made a headway marriages before the age of 13 or 14 never take place.

14. Illiterate women in this country do play an important part in consummations of marriages for their children.

15. Generally difficulties are experienced in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code and the medical evidence is taken in deciding the point. To remove or minimise these difficulties it would be well if a birth certificate of girl is produced in the court.

16. To some extent the difficulty in determining the age is bound to be minimised if the Age of Consent for Section 375 of Indian Penal Code is raised above 14.

17. Extra-marital and marital offences should be separated. The punishment for the former offences should be for 2 years and a fine of Rs. 1,000 and that for the latter a fine of Rs. 1,000.

18. Both the offences should be tried by a first class Magistrate.

19. I have no practical suggestion to offer. But the matter should be independently enquired into by an agency other than Police.

20. A legislation fixing the minimum age of marriage will be more effective. This is in consonance with public opinion also.

21. On both—on the strengthening of the Penal law as well as on social propaganda.

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**Written Statement, dated the 13th August 1928, of Mr. V. K. DESHPANDE, B.A., LL.B., Additional District and Sessions Judge, Jubbulpore.**

1. I have heard of no dissatisfaction.

2. So far as the extra-marital relations are concerned there will be no dispute about increasing the age limit to 16. There are several instances in which girls are not now married before that age and as it is risky to presume intelligent consent before that age it is necessary that unmarried girls should be protected at least till that age.

(b) As regards the marital relations the case is however different. There is no doubt that early cohabitation is a great evil and it is further desirable from an economic point of view to check the birth-control. But I think that these considerations in themselves do not justify an advance on the present law—especially when they are not the sole causes that have led to infant mortality and to the physical deterioration of the present generation. Puberty is generally attained before the age of 14 and the proposed amendment is bound to create unnecessary unpleasantness and also to unnecessarily offend the religious sentiment—whether rightly or wrongly based—of the public at large. Where cases are brought to Court it may also tend to break up the peace and harmony of the home—especially of the

married girl. Education and economic conditions of India have been gradually increasing the age limit of marriage and achieving the desired object. Under these circumstances I, therefore, think that the matter had better be left to the good sense of the people.

3. Crimes of seduction and rape do not seem to be frequent in this part of the country. It is difficult to say if the amendment of the law made in 1925 has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. This being the case no question of proposing measures to make the law effective arises.

4. So far as my impression goes the amendment of 1925 has had no effect in postponing the consummation of marriage, or in stimulating public opinion in that direction, or in putting off marriages beyond 13. It is education and the economic conditions which are going the work and a social propaganda on a large scale will smoothly and quietly achieve the object.

5. The usual age at which girls attain puberty is, I think, between 13 and 14. Puberty is a little bit earlier in city life than in rural.

6. It is difficult to say if cohabitation is common before puberty but, I think, it is not. It is however common in married life soon after puberty. Answer to sub-question 3 is covered by the above answers to sub-questions 1 and 2. Only rape cases come to Court.

7. Religious injunction amongst the Hindus is against consummation of marriage before puberty. It attaches a very great sin (Brahma-Hatya) to cohabitation before puberty. The practice of early consummation of marriage at puberty amongst the Hindus is however due to religious injunction. The injunction can be found in Manu, Chapter 3, Vasistha Samhita, Chapter 5, Vyas Samhita, Chapter 2, Dharmasindhu, Parichheda 3, Purvardha, Nirnaya Sindhu, Parichheda 3, Purvardha, and Gautam Samhita, Chapter 5, Parashara Samhita, Chapter 7, Vishnu Samhita, Chapter 24, Shankh Samhita, Chapter 15, and several other books on religion in fixing the age limit of marriage before the age of puberty also mean the same thing. A sin of Brahma-Hatya is attached to a breach of the injunction.

8. "Gaona" or "Garbhadan" are usually performed in this part of the country. The former is performed amongst the Hindi-speaking people while the latter amongst the Maharashtra community. "Gaona" takes place before puberty and it may or may not coincide with it. The ceremony of "Gaona" however does not mean cohabitation between husband and wife. "Garbhadan" ceremony takes place after puberty and it takes place as early as possible after the first three days on the attainment of puberty.

9. From a layman's point of view I should say that attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage and I should think that before the age of 16 the physical maturity should not on an average be taken to justify the consummation without injury to health and progeny.

10. I do not quite follow what is meant by the expressions "intelligent" and "due realisation of consequences" used in this question. But if the expressions are taken to have quite an ordinary meaning I should think that a girl of 16 may be taken to be competent to give an intelligent consent to cohabitation with a due realisation of consequences. Owing to the general ignorance however prevalent in India this question does not arise in a majority of cases.

11. In my opinion cohabitation before full physical development is not the sole cause but is only one of the contributory causes resulting in bringing about deterioration of health in the present generation. Particular instances are, therefore, not necessary.

12. No, not the sole cause but as one of other several causes.

13. No. I should say that 90 out of 100 do not even know of the amendment.

14. Now that the age limit of marriage is being pushed up by force of circumstances this question does not arise in the case of women of the present generation. Amongst the old women there is still noticeable a desire for early consummation but not before puberty.

15. Yes. The Registration of births should be made not as soon as a child is born but after it is named.

16. The difficulty or margin of error may possibly but not materially be reduced or minimised.

17. In the view I hold as expressed by me in answering Question No. 2 there is no necessity to separate extra-marital and marital offences into different offences and the law, as it is now, may be allowed to stand. In case the age is raised to 14, in the case of marital relations the marital offence in such a case should be separated from the extra-marital offence but there is no necessity to make any change in Section 376, Indian Penal Code and the illicit married intercourse dealt with as a separate offence as is proposed. The punishment however should not exceed one year.

18. Illicit married intercourse offence should be tried in camera. Other offences can be tried as they are now done at present.

19. When an offence concerning marital relations is concerned it should be investigated by an officer not below the rank of a Deputy Superintendent or an Assistant Superintendent of Police and that too on an investigation being ordered by the District Magistrate.

20. Fixing the minimum age of marriage would be more effective than a penal legislation fixing a higher Age of Consent for marital cases. Neither of the two would however be in consonance with public opinion. I am not aware of any law fixing age limit of marriage in any country and I do not think that India should have one.

21. I should certainly prefer to rely more on the progress of social reform by means of education and social propaganda than on the strengthening of the penal law to secure the object in view.

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Written Statement, dated the 10th August 1928, of Mr. R. S. SHUKLA, Yakil, Raipur.

1. In this part of the country there is no percentage dissatisfaction with the state of law as to the Age of Consent. The country is too backward to feel dissatisfaction. Amongst the lower class of people, particularly the labouring classes, the standard of morality is rather loose but the fear of social ostracism does not bring most of the cases to light and detection is practically impossible inasmuch as females whether having sexual intercourse with consent or without consent are loath to expose themselves to social ignomy.

2. (1) No circumstance justifies the retention of the law as it is.

(2) In my opinion making an advance on present law is desirable. Reasons and circumstances which prompted and allowed the age to be raised to 14 in clause 5 of Section 375 are still present. I am of opinion that this advance should have been made in 1925 when the law was amended.

3. Crimes of seduction are very frequent and of rape occasional in this part of the country (Chhattisgarh). This is so mostly in lower classes, particularly the labouring classes, and very rarely in the higher classes. The reason is that the standard of morality as stated before is rather loose and seduced women are either taken back on payment of money for admission into caste or they are left with the seducer who pays compensation in the shape of what is called Bihati (Marriage expenses). Divorce and re-marriage being permissible amongst the lower classes, crimes of

seduction are very frequent. Cases under Sections 497 and 498, I. P. C., are frequently filed and are in many cases compromised by the return of the seduced woman or payment of compensation. In my opinion the amendment of the law made in 1925 has not made much progress in preventing or reducing cases of rape outside the marital state, but if the age is raised to 16 it will certainly be a great preventive and would, in my opinion, reduce the cases of rape and improper seduction of girls for improper purposes. The maintenance of proper and accurate record of birth of girls in each Police station House will greatly facilitate the proof of age and the raising of age to 16 will greatly minimise the chances of accused being let off for want of proper evidence of age. Many cases which at present go under Section 497 will come under Section 375 and the fear of enhanced punishment provided in Section 376, I. P. C., will serve as a great deterrent. Many cases of 497, I. P. C., are with respect to girls over 14 years and below 20 years of age. If I have my way I shall raise the Age of Consent to 18 if not 20 in cases outside married life. It would be a good advance in case of rape.

4. (1) No.

(2) Yes. It has made many people think about this question which affects the health of the nation. In these days of social revolution public opinion is going steadily towards the raising of age to 18 or above it for married girls.

(3) No. The reason is there is no effective check and there is great difficulty of proof of the violation of the law. The maintenance of a Register recording age at marriage and the production of a birth certificate from the Station House within whose jurisdiction the girl was born would prevent people from consummating the marriage before the prescribed age and would naturally lead people to put off marriages beyond the 18th year. I would like the legal prohibition of marriage before 14 years.

5. No. The usual age at which a girl attends puberty in Chhattisgarh is about 13 years. There is hardly any difference in different castes and communities or classes of society in Chhattisgarh. Their food is the same and there is little difference in their modes of living. Chhattisgarh however contains a fair population of persons who have migrated to this part of the country from various parts of India. Amongst them puberty is attained by girls at about 14 years of age generally.

6. Co-habitation is not common before—

(1) puberty.

(2) It is common soon after puberty.

(3) No. Except in exceptional cases. Cases rarely come to court.

7. Yes. The practice of early consummation of marriage at puberty amongst the higher class of people is attributable to religious injunction. The authority which has most influenced such consummation is that of "Sanvata Sanhita", the following Shlokas from that Sanhita give the injunction as well as penalty:—

अष्टवर्षा भवेद्गौरो नव वर्षा तु रोहिणी ।

दशवर्षा भवेत् कन्या अत उर्ध्वं रजस्वला ॥

माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।

व्रतंस्ते नरकंयान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥

तस्माद्विवाहयेत् कन्यां यावन्नर्तुमती भवेत् ।

विवाहोऽष्टमवर्षायाः कन्यायांस्तु प्रशस्यते ॥

The following from "Yam Sanhita" is also responsible for marriages and its consummation at 12 or before puberty:—

प्राप्ते तु द्वादशे वर्षे यः कन्यां प्रयच्छति ।  
मासि मासि रजस्तस्याः पिता पिबति शोणितम् ॥

Manu says a man of 30 should marry a girl of 12 and a man of 24 a girl of 8. See Manusmiti, chapter 9, shloka 94.

त्रिंशद्वर्षो वहेत कन्यां हृद्यां द्वादश वार्षिकीम् ।  
अष्टवर्षो अष्टवर्षा वा धर्मोसीदति सत्वरः ॥

Similar injunctions are to be found in "Parashar Sanhita" and "Vashista Sanhita". These authorities prescribe the penalties which influence orthodox opinion a great deal in this matter. It is said if a girl attains puberty before marriage the parents and elder brother go to hell or if marriage is not performed on the attainment of 12th year the father commits sin which is equivalent to drinking the menstrual blood month after month. These authorities only indicate when marriage is to be performed. Early marriage undoubtedly leads to early consummation. All these authorities however were for different periods in India's History. Present times require for national regeneration and well-being different Smritis and their place is being supplied by legislation of the kind contemplated.

8. 'Gaona' ceremony is usually performed in this part of the country. It is performed generally after attainment of puberty. It coincides with the consummation of marriage but where marriages take place now-a-days after the attainment of puberty consummation takes place anterior to the Gaona ceremony.

9. The attainment of puberty is not in my opinion a sufficient indication of physical maturity to justify consummation of marriage. Unless a girl attains the age of 16th her physical development cannot be considered to be enough to justify such consummation without injury to her own health and that of her progeny. The following shlokas from "Shushrut" and "Wagbhata" clearly support the contention:—

॥ सुश्रुत

ऊनषोडशवर्षायामप्राप्तः पञ्चविंशतिम् ।  
यद्याधत्ते पुमान् गर्भं कुक्षिस्थः स विपद्यते ।  
जातो वा न चिरंजोवेष्णीवेद्वा दुर्वलेन्द्रियः ।  
तस्मादत्यन्तब्रालायां गर्भाधानं न कारयेत् ।  
पूर्णषोडशवर्षी स्त्री पूर्णविंशेन संज्ञता ।  
शुद्धे गर्भाशये मार्गं रक्ते शुक्ले अतिले हृदि ॥  
वोर्यवतं सुतं सूते ततोऽन्यनादयोऽयुजः ।  
रोग्यत्पायुरधन्यो वा गर्भो भवति नैव वा ॥

10. Sixteen years seems to be the proper age at which a girl may be expected to give such intelligent consent with a due realization of consequences. Girls at earlier age cannot be expected to give such consent. They cannot before that age realize the consequences. In order that she be able to give intelligent consent she must be able to understand the various acts which the bride and bridegroom are expected to do on their first meeting. A personal

of Guhya Sutra of Ashwalayan and Gobhil and Vatsyayan's Kamsutra will indicate what intelligence was expected in India of old and which is surely necessary to be reached before the married couple is said to begin the enjoyment of married life. The vedic rituals of marriage also clearly indicate that the girl is to be married only after she is fit for consummation of marriage.

11. Yes. In two cases I know where cohabitation before full physical development resulted in consumption and death of the girls after two or three years. In one case there was uterus trouble.

12. Although with other causes some economical and some social I consider early consummation and early maternity responsible for high maternal and infantile mortality.

13. Yes. It is not general but confined to educated class of people.

14. Women do like early marriage of their children and if and when girls are brought home, consummation takes place.

15. Yes. Difficulty is always felt as to proof of age. Accurate record of age is seldom available and medical men are always guarded in their opinion and find it difficult to fix correct age. I have already suggested accurate record of birth should be maintained. Register of marriages be maintained in each Police Station House containing declaration of date of birth of the married girls. The record may be corrected by procuring the entries from birth record in village Kotwars Book or Polico Station.

16. Yes.

17. Yes. For extra-marital offences the punishment as provided in Section 376, Indian Penal Code, will do, i.e., transportation for life or imprisonment of either description which may extend to 10 years and fine. As for marital offences I would in no case agree to punishment of imprisonment. I would not like to embitter the feelings between husband and wife for life and degrade men to the status of an ex-convict. It should be only fine which may extend to Rs. 1,000.

18. Yes. The procedure in cases of rapo extra-marital should be that of warrant cases and in marital cases it should be that of summons cases. I am of opinion that opportunities to prosecute marital cases will be rare. It would be impossible to prevent collusion and so far as penal provision for marital cases is concerned it shall practically be a dead-letter. But it is said to keep it on Statute Book as it will surely be of help to protect girls from their abuse by thoughtless husbands. These are the only cases which will come to light if parents of the girl are against consummation and the husband persists in his folly inspite of their protests.

19. The best safeguard is legislation fixing the minimum age of marriage. No other safeguard is likely to be of any effect.

20. No. Legislation fixing the minimum age of marriage will surely be more effective but penal legislation is equally a necessity though opportunities for its use will be rare. Orthodox classes will prefer penal legislation. Educated public opinion is in favour raising the minimum marriagable age and is not opposed to penal legislation.

21. Progress of education and social propaganda is very slow. In the present state of country I would use all powers available to me to attain my object early. I know the value of social reform and education and would have been glad to attain my object through them but unfortunately we are placed in such circumstances as compel me to take shelter under legislation.

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Written Statement, dated the 10th August 1928, of Khan Bahadur  
M. E. R. MALAK, Nagpur.

1. There is dissatisfaction only amongst a section of the educated people. So far as the general mass is concerned, there is no dissatisfaction.

2. Personally I would like that the Age of Consent be raised. In my institution, I have fixed 17 as the minimum age for the marriage of the girl. But taking the condition of the general mass any change is undesirable. The age for attaining maturity ranges from 12 to 14 and cohabitation of the husband begins at this age; if it is penalized there would be great dissatisfaction. The measure may wait till public opinion is educated in the proper direction.

3. In this district there are very few crimes of seduction and rape, and there does not seem to be any necessity in taking any more steps for the prevention of it.

4. I do not think that the amendment of 1925 has been effective in prohibiting married girl against cohabitation with husband, by any of the three means suggested. It may be generally remarked that there is very little connection between legislative enactment and its effect on the conduct of those whom it affects. There are various reasons for that, the greatest amongst them being illiteracy, very few people know that any act has been passed and fewer of them still know their exact age when they are married; therefore the only step I would propose to make any Act effective is banishment of illiteracy, without that no amount of legislation will help the masses in any direction.

5. Twelve to 14 is the age at which girls attain maturity in this part of the country. It does not very much differ with different castes or communities or classes.

6. (a) Not before puberty.

(b) It is common, soon after puberty.

(c) Generally nobody cares to the age of the girl, merely attaining puberty is quite sufficient for cohabitation, but it cannot be said that this begins below 13 as in many cases puberty begins after 13.

(d) Very few of such cases go to court.

7. The early consummation is due to the prevalent belief that a girl is quite fit for cohabitation as soon as she attains puberty. There is nothing in Muhammadan religion, which enjoins early consummation, it is purely a matter of common practice.

8. There is a ceremony amongst Muhammadans which is called zafaf which is equivalent to Gaona. It generally coincides with the consummation of marriage and it is performed after puberty.

9. No. I have in my institution fixed 17 as the age at which a girl can safely cohabit without injury to her health.

10. It is difficult to answer this question, but 17 would be the age at which a girl is expected to form an idea as to the consequences of cohabitation.

11. I cannot say.

12. Yes.

13. There has been no further development of public opinion.

14. I cannot reply.

15—16. I cannot say.

17. This question is not quite clear. However as I have understood it I would like the two offences embodied into two different sections. The present scale of punishment is quite sufficient.

18. Trials for offences within the marital state should be held in camera.

19. None.

20. Fixing the minimum age of marriage would be more convenient than fixing a higher Age of Consent. It is preposterous to punish a person after he has once legally entered into marital relations.

21. I would prefer to rely on the progress of social reforms by means of education and social propaganda than on strengthening of the Penal Law.



Amongst the educated classes of the people of this part of the country the age limit for marriage itself has gone up without the help of any penal law and that would be so even amongst the backward classes if proper propaganda is taken up.

### Written Statement of Mr. Y. M. KALE, B.A., LL.B., M.L.C., Buldana,

1. No.

2. It is necessary in my opinion to make an advance on the present state of law. Though boys and girls are married at a comparatively higher age than before, in the educated classes and classes of higher social status, the evil is still present in the great masses of Hindu and Mahomedan population and the known evils of child marriages are not effectively prevented. An advance is therefore necessary.

3. Crimes of seduction are frequent but they have very little concern with the age of girls. The age of women seduced is generally above 16. A large number of such cases are those of dissatisfied girl wives or of parents who want to make money by taking away the girl from her former husband and marrying her to another husband of the same caste for money consideration. These cases are almost confined to those castes among which a remarriage or second marriage after divorce is allowed. Seductions in such cases are in the same caste and are not condemned strongly by the society and are not even deemed immoral. This evil is on increase but this will be hardly stopped by the proposed changes in the law, as age counts for very little in such cases.

Other cases of seduction are for immoral purposes and are looked down upon. Such cases are very few. Cases of rape are even fewer.

The recent amendment of the law in 1925 in raising the Age of Consent has no effect on cases of rape or seduction.

I think no further steps are necessary in this matter.

4. In this part of the country, the amendment of 1925 has no practical effect. Generally there is no cohabitation between a husband and wife before the latter's puberty.

5. Generally at the age of 14. This differs in different grades of society. In more refined classes, this period is even less.

6. (1) No.

(2) Yes.

(3) Generally not. No cases have ever come to court.

7. Partly to religious injunction and partly to custom. Some Smrities enjoin thus:—

Vide Manu Smriti:—Adhaya 9, verse 94.

**दक्षस्मृति यमहारित निर्णय सिंधु ।**

Penalty for breach.

Certain expiatory ceremonies are provided.

8. "Garbhadan" ceremony is invariably performed in the higher castes but among the lower classes who form the majority of population no ceremony is generally performed. Whenever this is performed it is soon after puberty and never before. In the majority of cases it is performed within a month or two after puberty.

9. It is not a sufficient indication but it is the only maximum safe indication thereof. It will depend upon each particular case if there is sufficient physical development so as to justify consummation. Generally 16 will be safe age to assume this.

10. Sixteen would be the maximum age for such purposes.

11. No special cases were observed by me except cases where girl mothers were weak in constitution, the progeny also was weak and the mothers and the progeny succumbed to diseases. No special cases can be quoted.

12. Yes, though it is one of the contributory causes.

13. None whatsoever.

14. Generally they do but not before puberty in any case.

15. No difficulties were experienced. The birth registers and medical certificates were sufficient for the purpose.

16. Yes, but no necessity of determining an age below 14 is generally experienced.

17. I think this distinction is necessary at it is undesirable to prescribe the same maximum punishment under Section 376 for husbands and strangers. For husbands the maximum should not be more than 2 years in any case, and for Section 376-A, it can even be reduced to one year. The maximum for strangers is alright.

18. No change in procedure is necessary.

19. Collusion will be very common in the cases of husbands and wives but not in other cases, and no safeguards are possible in the former cases and are unnecessary in the latter case.

20. No. The latter course would be more effective. The latter course will be comparatively less objectionable to the public though it is likely that people will not welcome the legislation.

21. The latter.

#### *Concluding.*

I think no useful purpose will be served by further raising the Age of Consent. In the cases of husbands no cases will be discovered as there will be very few cases of exposure. In the case of stranger the present law as recently amended is sufficiently powerful to punish the offenders. A legislation on the lines of Mr. Sarda's Bill is the only remedy to prevent cohabitation by husbands before the undesirable age as it coincides with puberty. There is one objection however to that bill.

It will expose the poor and *lower classes girls* to the lust of vicious people, between the age of 12 and 14. In the married state there is some protection and less chances of the girl going wrong. This however is not a very serious objection and I will not oppose the bill seriously.

I would however depend more on the spread of education and social propaganda.

**Written Statement, dated the 12th August 1928, of Mr. G. P. JAISWAL, LL.B., M.L.C., High Court Pleader, and President of Sohagpur Municipal Committee.**

1. Yes, though the ignorant masses do not feel or express it. It is because of their ignorance.

2. The old law was amended only recently. It is too early to pronounce any opinion on its effect. It will not be safe to draw any definite conclusions from the little lapse of time that we have had. No doubt an advance on the existing law will not be undesirable as it will in the long run produce a beneficial effect on the health of the nation and will be appreciated as a social reform.

3. Seduction and rape are not unfrequent though the actual detection or prosecutions are only few. The amended law has not yet produced any appreciable amount of difference in the moral improvement. I think apathy to prosecutions on the part of the relatives of the victim is due to a sense of public disgrace and in some cases ignorance is at the root. Sound education on proper lines will drive away this ignorance. The education in due course will help the social propaganda and the desired improvement in the

moral and physical development of the nation. In cases of marital offence as distinct from the extra-marital, detection is not possible as the parties do not give out the truth. But this evil is unavoidable and cannot but continue till the public opinion does not grow stronger and till the sound education and social reform do not take their proper place. But the marital offences do continue in spite of the amended law.

4. No. Passing of Sarda's Bill may help a much needed social reform. Because it goes to the root of the evil. But more passing of that Bill will not produce *ipso facto* the desired results. Education on proper lines will be equally necessary.

5. Usual age is between 12 and 14. It differs according to the general habits of class or community in the matter of living and food.

6. Cohabitation is common amongst the illiterate masses. While in case of middle classes it is generally soon after puberty. Only the advanced people wait on till after 13 years for the marriage, consummation or cohabitation.

7. More to the illiteracy than to the religious injunction. It is the itinerant Pandit or the village priest, who is responsible for the dogged belief amongst the masses that the marriage after puberty or postponement of consummation after puberty is sinful. It is they who more or less are responsible for this sort of moral education. The illiterate therefore thinks that the consummation of marriage soon after puberty is religiously enjoined, without enquiring into the merits of such a religious injunction. Nevertheless even in their cases this injunction is without a penalty.

8. "Gaona" is done immediately after marriage and consummation is expected as a necessary concomitant. In majority of cases it is done before puberty, while in other cases soon after puberty.

9. Certainly not. In my opinion 16 or after.

10. I believe not before 16 but generally after 18.

11. It is often noticed that such girls have suffered in constitution and health. Pregnancy in their cases is very rarely a blessing. It has in very few cases resulted in safe delivery. It is often accompanied with either some disease or ends in abortion. They give birth to weaklings, causing high infant mortality. Instances are too common to be given in detail. Shattered health and constitution of females amongst the masses are the examples. The statistics of the Public Health Department will bear me out. The infant mortality in the Central Provinces and Berar is contained on pages x and xi. Appendix H (Report of 1926).

12. Yes along with economic distress and poor nourishment.

13. Development of such opinion is not found beyond the highly educated circle.

14. Ignorant who form the bulk of the people do so. But those educated do not prefer early consummation for children.

15. In some cases difficulty was found but the question was settled through the aid of medical opinion. Maintenance of reliable birth registers in proper form can help in minimising or removing this difficulty. Such records should not be eliminated for at least 20 years.

16. Cannot be so said with certainty.

17. A separation is desirable. Existing provisions regarding punishment do not require a change. Even if the proposal of Sir Harising Gour be adopted the suggested punishments are all right.

18 and 19. I cannot suggest any improvement in the existing provisions.

20. The latter one, fixing the minimum age of the marriage, will be more effective.

21. I would rather prefer to rely more on the latter than on the former. Without education and social reform legislation will not give the desired result.

**Written Statement, dated the 11th August 1928, of Mr. G. P. DICK, C.I.E., Bar-at-Law, M.L.C., Government Advocate, Nagpur.**

I have received your letter No. 42-A. C. C., dated the 25th of July last, to my address with a copy of the questionnaire. I can only give an opinion in reply to Question No. 2 and that with reference to Sections 375 and 376 of the Indian Penal Code.

2. Your Committee is, no doubt, aware that, while rape is not a common offence in these Provinces, there has undoubtedly been an increase in the number of cases of late which is commented on in the Report of Criminal Justice of these Provinces for the past year.

3. The Age of Consent, as contained in Sections 375 and 376 of the Indian Penal Code, should be raised to 18 years, the age which was laid down in Sections 372 and 373 *ibid*, because the defence almost invariably is that a woman has consented but that having been caught she, to save her reputation among her caste people and public, accuses her lover of rape.

4. It is a great misfortune in my opinion that the Courts are inclined in many of such cases to consider the possibility of an element of doubt which undoubtedly cast a slur upon the reputation of Indian women in general, which, in my humble opinion, is unmerited.

5. The remedy seems to me to lie not only in raising the Age of Consent and thus ensuring that the man who pleads consent is dealing with a woman who is major and sexually mature, but, in addition, I would ask for very serious consideration of the offence of adultery. In India, adultery is a crime and punishable with a very heavy sentence, as much as is usually inflicted in practice where convictions for rape have taken place.

6. I would suggest that Section 299 of the Criminal Procedure Code should be amended in such a way that leaving complaints to be instituted as at present, provision should be made that a Court, which is trying a case of rape and finds adultery proved, can convict and sentence for the offence of adultery when the husband has been examined as a witness in the rape cases and the marriage proved.

**Written Statement, dated the 13th August 1928, of Mr. A. R. PIMPRIKAR, President, Bar Association, Buldana.**

1. No.

2. It is necessary in my opinion to make an advance on the present state of law. Though boys and girls are married at a comparatively higher age than before, in the educated classes and classes of higher social status, the evil is still present in the great masses of Hindu and Mahomedan population and the known evils of child marriages are not effectively prevented. An advance is therefore necessary.

3. Crimes of seduction are frequent but they have very little concern with the age of girls. The age of women seduced is generally above 16. A large number of such cases are those of dissatisfied girls wives or of parents who want to make money by taking away the girl from her former husband and marrying her to another husband of the same caste for money consideration. These cases are almost confined to those castes among which a remarriage or second marriage after divorce is allowed. Seductions in such cases are in the same caste and are not condemned strongly by the society and are not even deemed immoral. This evil is on increase but this will be hardly stopped by the proposed changes in the law, as age counts for very little in such cases.

Other cases of seduction are for immoral purposes and are looked down upon. Such cases are very few. Cases of rape are even fewer.

The recent amendment of the law in 1925 in raising the Age of Consent has no effect on cases of rape or seduction. I think no further steps are necessary in this matter.

4. In this part of the country, the amendment of 1925 has no practical effect. Generally there is no cohabitation between a husband and wife before the latter's puberty.

5. Generally at the age of 14. This differs in different grades of society. In more refined classes, this period is even less.

6. (1) No.

(2) Yes.

(3) Generally not. No cases have ever come to court.

7. Partly to religious injunction and partly to custom. Some Smritis enjoin thus:—

*Vide Manu Smriti—Adhaya 9. Verse 94.*

**दत्तस्मृति यस्मिन्नारित निर्णयमिधु ।**

Penalty for breach:—

Certain expiatory ceremonies are provided.

8. "Garbhadan" ceremony is invariably performed in the higher castes but among the lower classes who form the majority of the population no ceremony is generally performed. Whenever this is performed, it is soon after puberty and never before. In the majority of cases, it is performed in a month or two after puberty.

9. It is not a sufficient indication but it is the only maximum safe indication thereof. It will depend upon each particular case if there is sufficient physical development so as to justify consummation. Generally sixteen will be the safe age to assume this.

10. Sixteen would be the maximum age for such purposes.

11. No special cases were observed by me except where girl mothers were weak in constitution the progeny was also weak and the mothers and the progeny succumbed to diseases. No special cases can be quoted.

12. Yes, though it is one of the contributory causes.

13. None whatsoever.

14. Generally they do but not before puberty in any case.

15. No difficulties were experienced. The birth registers and medical certificates were sufficient for the purpose.

16. Yes, but no necessity for determining an age below 14 is generally experienced.

17. I think this distinction is necessary as it is undesirable to prescribe the same maximum punishment under Section 376 for husbands and strangers. For husbands the maximum should not be more than 8 years in any case and for Section 376-A it can even be reduced to one year. The maximum for strangers is alright.

18. No change in procedure is necessary.

19. Collusion will be very common in the cases of husbands and wives but not in other cases, and no safeguards are possible in the former cases and are unnecessary in the latter case.

20. No. The latter course would be more effective. The latter course will be comparatively less objectionable to the public though it is likely that people will not welcome the legislation.

21. The latter.

### *Concluding.*

I think no useful purpose will be served by further raising the Age of Consent. In the cases of husbands no cases will be discovered as there will be very few cases of exposure. In the cases of stranger the present

law as recently amended is sufficiently powerful to punish the offenders. A legislation on the lines of Mr. Sarda's Bill is the only remedy to prevent cohabitation by husbands before the undesirable age as it coincides with puberty. There is one objection however to that bill.

It will expose the poor and *lower class girls* to the lust of vicious people, between the age of 12 and 14. In the married state there is some protection and less chances of the girl going wrong. This however is not a very serious objection and I will not oppose the bill seriously.

I would however depend more on the spread of education and social propaganda.

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Written Statement, dated the 15th August 1928, of Mr. M. P. KOLHE, M.L.C., Yeotmal.

(1) There is, so far as I am aware, no dissatisfaction as such with the state of the Law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code.

(3) The crimes of seduction or rape are not so frequent in my part of the province; but still several cases happen of this type.

The Amendment of Law made in 1925 raising the Age of Consent to 14 years has not been successful to an appreciable degree in preventing or reducing cases of rape outside the marital state.

The only efficient and proper measure for this would, I believe, be to prevent marriages by legislation within a particular period of age which should be fixed according to the public opinion without at the same time injuring the susceptibilities of the old and religiously orthodox people as far as possible and practicable.

To my mind the proper age limit would be about 13 for a girl and 18 or about the same for a boy.

(4) In my opinion the amendment of 1925 raising the Age of Consent within the marital state to 13 years has not been at all effective in protecting married girls against cohabitation with husbands within the prescribed age limit either by postponing the consummation of marriage, by stimulating public opinion in that direction or by putting off marriages beyond 13 years of age.

The only effective course to adopt for this, in my opinion, would be to prohibit marriages within the limit to be prescribed by legislation.

(5) In my part of the province the girls attain puberty generally between 12 to 15 years of age.

This does not, I believe, differ in different castes, communities or classes of society; but I think the girls in well-to-do classes attain puberty earlier than other girls; the facilities being available to the girls of the well-to-do classes of getting rich and good food, etc.

(6) The cohabitation, in my part of the province, is not common before puberty but in backward communities several cases of such cohabitation occur: and also in cases of marriages where husbands are advanced in age and the wives they get are too young to cohabit, this generally happens. Among backward communities the early marriages are responsible for this.

The cohabitation soon after puberty is very common in my province; it is as a rule so. It very rarely happens that cohabitation does not take place soon after puberty. Cohabitation, before the girls complete their 13th year takes place, in many a case. In cases of girls who attain puberty before the completion of 13th year the cohabitation is common.

None of these cases, so far as my knowledge goes, come to Court. If at all they come the number may be very few.

(7) The early consummation of marriage at puberty, it is believed, is allowed by religion but it cannot be said that it is because of religious injunction

that it takes place. The consummation of marriage before puberty, it is believed, is against religion and as such is not common here. All these so-called injunctions of religion are based on the hygienic principle and in order that they should be followed by people, it is told that they form part of religion. I am not aware whether the *shastras* have enjoined any penalty for the breach of the same.

(8) 'Gaona' is performed generally among the well-to-do class of people. So far as my knowledge goes this ceremony coincides with the consummation of marriage and is not anterior to the consummation. It is generally performed as soon as the girls attain puberty or very soon after it.

(9) I personally do not consider that the mere attainment of puberty is a sufficient indication of physical maturity. It all depends on the general health of the girl concerned. At least sometime, say a year or two, must elapse between the attainment of puberty and the consummation of marriage to justify consummation without any injury to a girl or to her progeny. But I think early consummation alone is not responsible for the injury to the health of a girl or to her progeny. There are several other causes which combined together shatter the health of a girl and is injurious to her progeny.

(10) A girl would not, I believe, be competent to give an intelligent consent as such to cohabitation with due realisation of consequences till before 18 or more.

(12) Early consummation and early maternity alone is not responsible for high maternal and infantile mortality. This is one of the causes and some percentage of death might be due to this but it cannot be said that this and this alone is the sole cause of such a high mortality. Some customs, insanitary and unhealthy living, want of substantial and good food, idle habits, want of sufficient exercise, and the present system of education also contribute to this result.

(13) Not to my knowledge.

(14) Yes; to some extent it is true.

(15) Yes; the difficulties have been felt. It is generally left to the evidence of the Medical officer of high or low rank as the case may be. He is not expert many a times and as such it is very unsafe to rely on his evidence.

(16) I do not believe, by raising Age of Consent to 14, the difficulty experienced in determining the age would be reduced, to a great extent.

(20) In my opinion the legislation fixing the minimum age of marriage would be more effective than penal legislation fixing a higher Age of Consent for marital cases.

In my part of the country the latter alternative would be in consonance with public opinion. Then there would be very little scope for offences of the marital cases, as the field would be narrowed down to a great extent.

(21) Progress of social reform by means of education and social propaganda alone is not and would not be sufficient for the purpose and hence legislation is necessary.

**Written Statement, dated the 10th August 1928, of Mr. ONKAR PRASAD MISRA, Judge, Small Cause Court, Khandwa.**

1 The ages contained in the Indian Penal Code are not sufficiently high and intelligent consent is therefore out of question.

2. It follows that the ages must be raised so as to afford greater protection in the female sex in the eye of the law.

3. I have some experience of the village life of United Provinces where I occasionally go during the Civil Court vacation (Rae Bareilly District, Oudh).

Crimes of seduction are more numerous than rape in that part of India. I think the cases have now decreased owing to greater surveillance on the

part of Police officers and deterrent sentences passed by Courts and not because ages were raised.

Greater publicity should be given to the amended sections in the towns and villages. In some parts of India seduction of girls takes place to dispose of them by marriages to persons who cannot get girls for marriages.

4. Marriages are gradually being put off till the ages of 14 or 15. Consummation of marriages are not therefore of much consequence. Public opinion is distinctly in favour of late marriages. This is not due to the amendment in law in 1925 but owing to the scarcity of suitable boys in the case of educated community and the education of girls. I stick to the opinion that sufficient publicity should be given to the altered section of the law. The Age of Consent within the marital state has invariably been put off owing to late marriages but when marriages below that age have actually taken place the mischief has not probably been prevented.

5. The age of puberty varies according to the class of society. Amongst the poor and the indigent it generally takes place at 14 or 15 while amongst the well-to-do it varies from 12 to 14.

6. (1) In some parts where marriages take place at about 11 or 12 and the boys are about 14 or 15 which is not uncommon in the higher Kanyakubja Brahmans who are illiterate.

(2) The age of puberty is immaterial in such cases.

(3) The girl is ordinarily 13 or 14 years old in such marriages so that cohabitation below 13 is rare. None of such cases come to Court.

7. No. Religious influences are gradually losing ground everywhere. There are some religious injunctions which I am unable to quote.

8. 'Gouna' is performed amongst the United Provinces Brahmans (Kanyakubjas). It generally coincides with the consummation of the marriage. Puberty generally takes place before marriages but according to custom it is not necessary that the girl should have menses before marriage or Gouna.

9. Attainment of puberty (appearance of first menses) is never an indication of physical maturity and should not justify consummation of marriage.

I think medical opinion is in favour of the view that physical development takes place about two or three years after the first menstruation. Consummation should take place two or three years after puberty.

10. Sixteen. This is supported by the Aurvedic literature (Shushruta) which runs as follows:—

Unshodash varshayam apraptah panchvinshatim  
Yadiadhatte puman garbham kukshisthah sa vipadyate  
Jato wa na chiranjeevet jivetwa durbalendriyah.  
Tasmat atyanta balayam garbhadhanam na karayet.

For the present however 14 years would do.

11. One case of a girl in Cawnpore where she was married at the age of 12 years 5 months. She had attained puberty between 11 and 12 and looked well-developed. She gave birth to a son at the age of 14 and has had a host of diseases ever since, i.e., displacement of uterus anaemia, cough and asthma. Her son also suffers from weak health and had atrophy before he was 12 months old. Such cases can be multiplied.

12. Yes. As the mothers and their progeny suffer from weak health.

13. Yes. Confined to certain classes. I may however say that literature is mainly responsible for the advance of age.

14. Yes. Illiterate women who are guided by half-educated and inexperienced pundits. Religious ideas have greater hold on women.

15. I have had no criminal cases and so I can't answer the question. The difficulties if any can be easily minimised by insisting on greater accuracy in vital statistics and stating the serial number of the child in question for it



occasionally happens that the father or mother says that this is the child which was first born while as a matter of fact it is the second or third. If serial numbers were to be stated in such registration no difficulty in the identification of the child would arise. Similarly correct date of birth should be insisted on in school, vaccination or marriage registers whenever possible.

16. I can't see how it would be minimised.

17. Yes, as is proposed in the Criminal Procedure Code.

18. The offences should be deemed to be different.

19. No additional safeguards are necessary beyond departmental check.

20. In my opinion both the provisions are necessary. This amendment would penalise rape and the other guardians of children brought into wedlock. The latter would no doubt be inconsistent with orthodox religious opinion.

21. Strengthening the criminal law and the progress of social reform are necessary to revolutionize the ideas. The former is a punitive measure and is more necessary to check the current of abuses.

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**Written Statement, dated the 13th August 1928, of Mr. M. C. TIWARY, B.A., LL.B., Additional District and Sessions Judge, Bilaspur.**

1. I think there is dissatisfaction at least among educated people with the state of the Law as to the Age of Consent outside marital state as contained in Sections 375 and 376 of the Indian Penal Code. People do feel that a girl of 14 should not be considered competent to give an intelligent consent to cohabitation with a due realization of consequences.

2. In my opinion an advance on the present law is called for so far as extra-marital cohabitation is concerned. It is the duty of the State to protect such members of society as from immature understanding or other infirmity are likely to do acts which may prove ruinous to them. It is a settled fact that in India a person does not attain a full development of the power of understanding up to the age of 18. Hence the law has fixed that age as the minimum for one to be *sui juris* and capable of making valid contracts. If in ordinary matters a girl below 18 is not competent to give a binding consent I fail to understand why she should even at the age of 14 be deemed competent enough to sell away her honour by consenting to an act which makes her a fallen woman for ever, and an outcast from society. I would hence go a step further than Sir Hari Singh Gour's Bill and fix the Age of Consent outside marital relations at 18.

4. No. I do not think the amendment has been effective in protecting ment of the law made in 1925 has not, to my mind, succeeded in preventing or reducing cases of rape outside marital state or the improper seduction of girls for immoral purposes. I think raising the Age of Consent to 18 may have better effect.

4. No. I do not think the amendment has been effective in protecting married girls against cohabitation with husbands within the prescribed age limit either by postponing the consummation of marriage or by stimulating public opinion or by putting off marriage beyond 18.

In my humble opinion the amendment has been almost a dead letter as it was bound to be. Instead of fixing any age limit within marital relations the State should I submit undertake an organised propaganda to educate the people regarding the evil effects of early consummation.

5. The usual age is from 12 to 14. Yes. it differs in different classes of society.

6. In this part of the country cohabitation is not common before puberty but soon after puberty. It does not depend upon the age of the girl. These cases do not generally come to Court.

7. I do not know of any such religious injunction. The 'Garbhadhan' ceremony which is performed in certain communities at puberty appears to me more a social custom than a religious duty.

8. Yes. 'Gaona' or 'Garbhadhan' ceremony is usually performed in this part of the country. It is generally performed after the attainment of puberty. 'Garbhadhan' generally takes place immediately after puberty. As regards 'Gaona' it is performed either in the 1st year after marriage, or in the 3rd, and, at times, even in the 5th, if the girl is not sufficiently grown up and developed.

9. This query cannot be answered by me.

10. In my opinion at the age of 18 at the earliest.

11. Only one such case came before me. A girl of 10 was in that case raped by a youth of about 20. Her parts were very seriously injured and there was considerable hæmorrhage. She could not even move about for a considerable period.

12. Yes. I do think that early consummation and early maternity are responsible for high maternal and infantile mortality. The physique of Indian girls is sadly deteriorating and this has a serious effect on the intellectual and physical progress of the people.

13. I do not think there has been any further development of public opinion in this part of the country since the amendment of the law in 1925. So far as I have been able to gauge it, that opinion was in favour of a higher Age of Consent than 14 in extra-marital cases even before the afore-said amendment.

14. Ordinarily women in this part of the country favour consummation of marriage for their children soon after the girls attain puberty, though in high and educated society they like to postpone it to a later date.

15. Difficulties are always experienced in determining the age of girls in connection with offences under Sections 375 and 376, Indian Penal Code. In this part of the country we have generally to depend on Kotwar's register of vital statistics which does not, however, contain the name of the newly-born child, and does not, hence, afford conclusive proof. It is not properly preserved, I would suggest, that in each village it should be the duty of the lambardar to keep a register of vital statistics which should contain not only the date and parentage, but also the name of the child. As regards the name, the column may be filled in after the child has been named. These registers should be closed at the expiry of the year and should be deposited in the office of the Collector, where they should be preserved for 20 years.

16. I, as a lay man, do not think that the difficulty or margin of error in determining the age will be materially reduced or minimised if the Age of Consent is raised to 14 years or above.

17 and 18. I would do away with marital offence altogether. My view is that if the State wants that persons below certain ages though married, should not cohabit, then the only reasonable and proper course is to prevent marriages by legislation up to these ages. If, however, the State allows persons to be married irrespective of their ages then it should not put any restrictions on their relations as husband and wife.

In case my view does not find favour, I have no modifications of the present law to suggest both as regards the maximum punishment and the procedure.

19. No. I have none to suggest.

20. I do not think that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. In my humble opinion the aforesaid legislation penalising intercourse up to certain age has been quite ineffectual in the past and is bound to be so in future also. Such cases might be occurring by hundreds in the country where child marriage is so prevalent but hardly

any comes to Court. If one does at all come to Court, the chances are that it will fail for want of proof. Barring very exceptional and rare cases it is only the child wife and at the most some members of the family who can prove the offence. It is not likely that any of them will give evidence against the husband and thus send him to jail, however outrageous his conduct might have been. I would, hence, prefer the alternative of fixing the minimum age of marriage. I have not been able to gauge public opinion on this point with any degree of definiteness.

21. Education and social propaganda have been going on in the country for a long time, but the progress in social reform so far achieved is not commensurate with the needs of the times. The evils still exist on a large scale and are having their baneful effects. If we were solely to rely on education, I am afraid we may have to wait for an indefinite period before we secure the object in view.

In my humble opinion the State should now intervene and prevent child marriages by legislation.

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**Written Statement, dated the 12th August 1928, of Mr. R. D. BEOHAR, Extra Assistant Commissioner, Betul.**

*Introduction.*

1. The question of reform in our marriage institutions has been to the front during the last 40 years, and efforts have been made in recent years both by individuals and the public bodies to raise the marriageable ages of boys and girls but still the spectacle of child marriages is seen. This naturally leads to the vexed question of Age of Consent. Owing to the fact, that in India, religion enters into the ever-day life of our people, in a manner not found elsewhere, the matter becomes more complicated.

2. The solution to it lies in either by creating a body of capable workers and enlightened public opinion by the expensive and slow agency of education or by making legislation.

3. That the Government is alive to the necessity of this reform can be seen from the actions which it has taken from time to time in this direction. The Indian Penal Code, originally fixed the earliest age at ten, at which a girl could consent to intercourse so as to prevent the act being a rape. With the advance in time, in 1891, the age was raised to twelve. In 1925 the amendment has made thirteen, the earliest period for conjugal intercourse and in other cases to fourteen. It is now intended to examine whether any further amendment is necessary and what were the effects of the amendments of 1925.

Before replying to the questionnaire I think it proper to say at the outset that I do not claim to have an expert knowledge on the medical aspect of the case. My replies will therefore be based simply on facts observed by me as a villager in my student life, as a Government servant and a humble student of rural life in his various phases in the latter life. I had many occasions to study the lives and sufferings of several families from my young age and the replies given below are recorded from those facts and observations. I had also occasion to discuss these matters with peoples of several castes to test my views formed at various times. I had also the advantage of discussing their religious aspects with several pundits (priests). It is thus clear that my views have been formed by observations and study of village life and may in places not agree with the city conditions.

*Answers.*

1. Among the educated classes there is certainly a great dissatisfaction about the existing law. It is more manifest in cases of outside marital relations. In cases of consent, where conviction can be based only on age, in view of

the great difference in the opinions of medical authorities and the approximation with which age is generally determined leaves dissatisfaction in the minds of people, when in a true case, the accused gets benefit of doubt.

2. (1) As mentioned by me in my foreword religion permeates our every-day life, so any innovation sought to be introduced is seen to be an attempt to undermine religion. Orthodox people may therefore not like any interference, in their long-standing custom, secondly it may be urged by some that the present change was effected only 3 years back and had not sufficient trial. Both these arguments can be answered in one sentence "Amendment of 1925 was only a step towards the goal".

(2) The circumstances, which justify advance are the remedy, to the evil state of things resulting from present law and the sufficient advance made in public opinion as reflected in several bills and resolutions brought forward in legislative bodies from time to time. Sarda's Bill is one of them.

The evils are:—

(a) Direct—

(1) Immature consummation (within marital relations).

(2) Premature prostitution (outside marital relations).

(b) Indirect—

(1) Deterioration of race.

(2) Increased infant and maternal mortality.

3. There are some cases of rape and seduction which are not brought to light at all, they are mostly amongst low and backward classes. I know of cases, where the good girls have been seduced from their paternal roofs, by their would-be husbands. The parents later on acquiesce in these connections and the custom also sanctions them, by legalising such unions. Under these circumstances, it cannot be said with exactitude the frequency with which such crimes are committed. I have however reason to believe that they are sufficient cases of rapes and seductions.

The available statistics do not lead me to think that the amendment of 1925 had any effect in this district as will be clear from the following table:—

<i>Ante-amendment period.</i>										Total No. of cases.
Year.										
1920	.	.	.	.	.	.	.	.	.	3
1921	.	.	.	.	.	.	.	.	.	1
1922	.	.	.	.	.	.	.	.	.	Nil
1923	.	.	.	.	.	.	.	.	.	1
1924	.	.	.	.	.	.	.	.	.	2
1925	.	.	.	.	.	.	.	.	.	1
(22-9-25)	.	.	.	.	.	.	.	.	.	8

<i>Post-amendment period.</i>										Total No.,
Year.										
						No of cases of rape between 12 and 14 years.				
1925 (from 23-9-25)	.	.	.	.	.	Nil				Nil
1926	.	.	.	.	.	...				5
1927	.	.	.	.	.	...				5
										10

This means there was no case in this district after the passing of the Act in which a girl between 12 and 14 years was raped with her consent. The

actions of the accused were such as would have made them liable for punishment even under the old Act. They were either without consent or with consent with a girl below 12 years of age.

Seduction of girls for immoral purposes is governed by Sections 363, 366, 372, 373, 497 and 498, Indian Penal Code. The safeguard provided therein, are to a certain extent sufficient.

4. (1) I do not think considerable section of our people is even aware of this amendment. It may appear surprising, but the fact is there that not only illiterate, but a number of educated people, are ignorant of this provision of law. Once a marriage has been celebrated, its consummation is sought to be effected at as early a date as possible. Thus I am sure in majority of cases postponement has not taken place inspite of law and cases of cohabitation below 13 years take place.

(2) The public opinion has undoubtedly in some cases shown a tendency to protect married girls below 13 from cohabitation, but such cases have been very few and far between. They are not the rule and are mostly confined to urban areas and in enlightened families. In some instances cohabitation is prevented by intelligent parents by proper arrangement, in others health of the couple enters into consideration but they cannot be called due to the presence of law.

(3) I am inclined to think that the postponement of marriage beyond 13 years where it exists is not due to the amendment but the main causes operating towards that are:—

- (1) General education and wide awakening.
- (2) Rise in standard of living.
- (3) Early marriage does not give sufficient time to prepare him for the struggle of life so he starts comparatively unarmed in life. There is a further compulsory demand on his slender purse, to look after a number of children at an early age.
- (4) Efforts of caste leaders and conferences.
- (5) Poor physique.

These causes however do not enter into calculation to a great extent among villagers, where the landed patrimony is generally the main source of income. It is why the marriages in villages are comparatively early. Physiological causes are never considered either in urban or rural areas.

Puberty is supposed to have been attained when the menstruation commences. This varies greatly with the individual and climate. Among the healthy it first appears at about 13 to 14 years while among the unhealthy ones it may commence even after 15 or 16 years. Generally the puberty is attained between 12 to 14 years, but departures from both limits have been made in some cases.

The variations are mainly due to social differences and their surroundings. The children among the labouring classes and villagers obtain precocious knowledge of sexual matters, owing to their seeing their relations and neighbours indulging in filthy jokes and want of sufficient privacy in domestic life. In addition, there is early sexual excitement of early marriages at the age of 10 to 12 years, with many possibilities of intercourse sanctioned by customs though illegal under the law and the opportunities of clandestine meetings and even of cohabitation with children of their age go a long way to effect the age of puberty.

Among educated classes, people with high ideals, avoiding trash and love literature and bad society I have seen girl attaining a higher age when puberty is reached.

6. (1), (2), (3). Among backward castes of people such as Gonds, Korkus, Kahars, Rajjads, Chammars, Mongs, Sweepers, etc., I know of cases where conjugal intercourse has taken place before puberty. This is due to early marriage and also owing to the fact that native customs authorise it. For them it is immaterial whether the girl has attained the age of puberty or not

or has past the age of 13 years, the parents soon after the marriage want the couple to lead a married life.

Even among higher castes like Kurmis, Kunbis, Malis, Kayasthas, Banias, Brahmans, etc., cases are not wanting to show that cohabitation takes place before 13 years.

At least, as far as my knowledge goes, none of such cases came to the Courts. I am further of opinion that though these cases may be of frequent occurrence, but there is not any possibility of their seeing the light of the day.

(i) There is the only direct evidence of the girl who has been raped. It is unnatural to think that an Indian wife will come forward to depose against her husband in whose happiness is centred her happiness.

(ii) The girl's parents, friends and a social reformer or even the police will not take trouble to go to the Court for want of direct evidence, even though the indirect evidence of sexual intercourse were available.

(iii) The public is mostly ignorant that even husband has not got a right to have intercourse with his wife if she is below 13 years. The force of custom is so strong that the law is observed more in breach.

7. So far I know, it is not due to religious injunctions but the fact is that there is a belief among parents that he attains demerit and commits an act of sin, if he suffers to marry his daughter after puberty or allows her to commence her menstruation at his house. Some think this to be a sin, equal to the killing of a Brahman or a cow and the sin increases in arithmetical progression with the number of menstruations unmarried girls have at their parents' house. I think this belief indirectly leads to early consummation. I am unable to quote any authority on this point. But majorities of people believe that considerations of sexual morality require consummation before the age of puberty and when the boy too is not much beyond it. This belief howsoever erroneous it may be, is supported by usage and custom. They think it religious and to dislodge it means a great difficulty.

8. 'Gaoná' was a device to postpone consummation of an early marriage and it prevails mostly among twice born castes. Lately, however, owing to economic reasons and partly due to late marriages it is being abandoned.

In most cases it is performed anterior to consummation, sometimes it coincides with consummation and in others after it, but such cases are very not many.

The usual custom is that it should be performed in the first, third or fifth year of marriage. It is immaterial whether the girl has attained puberty or not. Once the Gaona has been done consummation is inevitable. Auspicious Singashita or unlucky years sometimes compel them not unlike marriages to perform Gaona earlier or later than the age of puberty. Thus no definite statement can be made on this point.

9. I do not think that attainment of puberty, which generally coincides with the commencement of menstruation, is a sign of bodily maturity, it is only a sign of ovulation with possible capacity to conceive.

Ganeshdutt Sharma writes in his book "Santanshastra" that after 3 years from the first appearance of menstruation the girl becomes fit for consummation. My close observation also confirms that view. Taking the menstruation to commence at 13 according to this view consummation should take place at 16 years. There is no doubt that in such cases, the children will be more healthy and the mother will not lose her health as much as she does these days. I have seen cases, in which a father of 18 begot over a girl of 14 years, a child. Both the mother and the child suffered badly after delivery and the child died after a month's time.

10. It is very difficult to answer this question. This depends upon various consideration. An educated girl will appreciate the matter better than the uneducated and village girl. The latter has been brought up in atmosphere where she comes to know early what sexual relations and child bearing mean.

She sees her relations, friends and others of her age indulging and what she may think enjoying. Such a girl is likely to give consent easily without understanding what it means; as she sees no harm in it. The protection of law is more essential in such cases, the question of age should therefore be considered very carefully.

In India at the age of 12 or 14 years the girls hardly understand the consequences of their acts. In seduction cases a girl of below 16 years if eloped from lawful guardianship the delinquent becomes culpable. That means, the girls are not presumed by law in these cases to have attained sufficient maturity of wisdom. Those cases are different from a single act of cohabitation, but the prevention of immorality is both a social and physiological necessity. By 16 the girls in most cases have attained full development and begin to understand sufficient of world and its life. Granted full physical development and knowledge of men and women the girl at 16 is likely to give fairly intelligent consent with full realisation of her consequences.

11. I have seen some cases in which cohabitation before puberty had resulted in injuries.

S, a boy of about 18 years, had an intercourse with consent with a girl of 9 years. She bled so profusely that she was greatly exhausted, her private parts were so hurt that she could not move for days together and I think it is mainly due to that that she has no children till now. She is now about 20 years old and has been leading married life for the last 6 years.

M, a boy of 18 years, was married to a girl of 10 years, he had living with her since then. The girl gave birth to a child after 4 years and was always seen ailing. Her health has declined since early cohabitation and the child is extremely weak and rickety. He could not stand or walk till about 5 years.

B, a young man of 40 years, married S a girl of 12 years. He began cohabiting soon after marriage the girl began dwindling in health and inspite of medical help, died about 3 years later. I know that after first cohabitation with her husband she complained to her friends of pain in her private parts, difficulty in walking, blood marks were observed by her friends in her clothes.

12. As a layman, I think so. The early marriage and consummation naturally leads to the growth of children. The woman who has not attained physical maturity is not able to bear the travails of maternity and either she dies at the time of delivery or if she survives she become sickly. Her vitality and power of resistance is lowered and she soon becomes a victim to one disease or the other. The children born of such connection are naturally weaklings, who for want of care and attention either die early or live to be only pigmies and source of anxiety to their parents.

Certainly this affects our intellectual and physical condition. A healthy body is a healthy mind. A weakling is unable to work hard and attain proficiency.

13. Only among educated classes, I have mentioned elsewhere that the general public is ignorant of these provisions inside marital relations and outside marital relations they certainly feel when the accused is let off simply on account of age. Beyond these occasions, the general public hardly thinks of these measures, but certainly they would prefer an advance over the existing limit.

14. This depends upon the education of the females and the head of the family. So far I know, they do not care, at what age consummation takes place, but they certainly want to see their sons and daughters blessed with children soon after marriage. If this auspicious occasion is not soon reached, they begin suspecting sterility due to some ghost or evil star and begin propitiating the former, by means of incantations and the latter by worships, in order to be on the safe side, the females therefore prefer as early consummation as possible.

15. The main difficulties in rape cases is the question of age of the victim.

The age of the girl can only be determined by medical men approximately and owing to varying time of different sign making appearance, no absolute certainty can be attained about this. Generally the medical man determines age on:—

- (i) General condition of the body.
- (ii) Hymen.
- (iii) Development of breasts.
- (iv) Hair on pubis and armpit.
- (v) Attainment of puberty.

The Court at times gets help from the Kotwar's book and Horoscopes kept by the parents.

In case of girl of 14 years, all the above signs are generally in the state of development. This goes up to 16 years so it is difficult to draw a border line on the 14th year. Medical authorities are of opinion that second molar generally comes out between 13 and 15 years but never 16 years. So if 16 years age, may be fixed, this difficulty when second molar has not made appearance will disappear.

To further strengthen the medical evidence I would further like to propose, that the Kotwar's book, which is the basis of age, should be carefully preserved either at the police station or in the District Office and made a public record.

These measures will to a certain extent minimise difficulties.

16. I have mentioned in question No. 15 that it will to a certain extent minimise difficulties if the age is fixed at 16 years.

17. This may be done.

Intra-marital relation cases should be made punishable up to 3 years. The Court should have discretion to determine sentence in each case. A man who commits rape with his wife of 12 years and above, should be more leniently dealt with, than the man who has an intercourse with his wife less than 12 years of age. But this does not need legislative distinction. Extra-marital relation should continue to be punished as now.

18. Intra-marital relations should be made triable by first class Magistrates, while those of extra-marital relation cases should be tried with jury.

19. I have no further suggestion to make. This is a complicated question. Orthodox section would not tolerate any interference in their existing custom though signs are not wanting to indicate that even amongst orthodox families early marriage is condemned. The people are now feeling that the early marriage does not enable the boy to obtain sufficient qualification to earn a decent living and the compulsory demand to maintain his family makes his life unhappy and youthful of misery.

But still when it comes to their own children they do not have courage to reform at their house. I have more than once mentioned that law of age of consent has been ineffective in the case of intra-marital relations and is not likely to bear any fruit in future as long religion denominates Indian life and the girls continue to regard their husband's happiness, over any other consideration. The appalling illiteracy among females, and the conservative nature of females both wives and mothers cannot offer, an effective retardation to early consummation. The law even if further amended will remain a dead letter.

If the prejudicial effects to health and physical development have been stopped by preventing early consummation this can be done only by penalising an early marriage.

In my opinion majority of people will like this. It will have far-reaching effects on the physical and material conditions of the people. The progeny will be more healthy, the wasteful expenditure on marriages and the system



of taking money by fathers of bridegrooms from the girl's father will receive a set back.

I therefore support strongly the law fixing the minimum age. Sarda's Bill is a step in the right direction. Some of the provisions may be needing change but the principle underlying is sound. It gives wider opportunity for the publicity of breach and the offender brought to book.

21. In India, owing to diversities of caste and sub-castes, religion and customs all of which foster a false sense of prejudice and arrogance it is difficult to rely on public opinion only on such matter of importance. There is no doubt that public opinion has done much but still 40 years works have not shown much advance upon the old order of things. The domestic structure of Indian society is supposed to be based upon the religious injunction, and as these days there is hardly any religious education, all kinds of beliefs, customs and superstitions have passed into religion and they are followed as blindly as if they were instructions from the religious books. From the foregoing replies it will be seen that our marriage institution needs reform. It is crushing all enterprise from the nation, ruining the health of men, women, causing premature decline and death and yet it is sad to see those men who decry it in public meetings should act otherwise at their houses. Can we therefore expect much reform from such people. All so-called religious teachers do not direct themselves towards it they generally range on the side of opposition.

Good education is needed to produce thinking mind in the people but it will take several years and will cost much if it has to permeate through the masses.

The only alternative is to fix the age of marriage by law and thus make it possible to see the bridegroom and brides realising the significance of marriage ritual uttering it themselves as they did in the past.

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**Written Statement, dated the 13th August 1928, of Seth MATHURA-DAS MOHOTA, M.L.C., Proprietor, The R. S. Rekhechand Mohota Spinning and Weaving Mill, Hingaghat.**

1. There is no dissatisfaction with the present state of law as to the Age of Consent.

2. Social religious conditions do not justify an advance on the present law and hence the old law of consent should be retained as it is at present.

3. Cases of rape and seduction are not so frequent in this part of the country and the present Sections 375 and 376 of Indian Penal Code, can cope with these cases.

4. Amendment of 1925 raising the Age of Consent within the marital state to 13 years has been effective.

(i) There is no necessity of postponing the consummation of marriage.

(ii) Public and communal opinion should be stimulated in this direction, so as to put off beyond 13 years.

5 and 13. We do not want to go beyond the amendment of law of 1925.

5. The age of attaining puberty varies according to the climatic and economic conditions and surroundings in which the girls are brought up. It is in general between 12 and 13 years, though in a few cases and in Southern parts of India which is near to the equator, it may be at 11 or thereabouts.

6 and 7. As regards cohabitation, it is common soon after puberty irrespective of age and not before puberty, as in *Shastras* the union of a girl soon after she reaches puberty with a man in marriage is recognised. There has not been heard any case in the Court against the cohabitation with man duly married according to the *Shastras* and social customs.

8. *Gaona* called *Dwiragaman* is mostly followed in some form or other in the Hindu communities of this side, though there is no hard and fast religious injunctions for the same. This ceremony is performed according to the social customs that suits best for different communities, after the attainment of puberty which is the proper time for the union of a married girl with her husband.

9. The attainment of puberty reaches when there are some physical developments and that should be taken as a proper indication to justify the consummation of marriage (sexual intercourse) and if proper care is taken as per rudimentary principles of Hygiene there can not be any injury to her own health and to that of her progeny.

10. A girl of 13 years age in India is competent to give an intelligence consent to cohabitation with due realisation of consequences.

11. So far there has not been any cases of the cohabitation before puberty in the marital cases, that affected the health of girl, though on account of bad economical condition in general and want of medical attendance in time, there are every day cases of delivery failures bringing the death of females. Of course, there is a wrong belief in the ignorant people suffering from bad diseases that they will be free from it, if they make the sexual intercourse with a girl that has not attained puberty and accordingly some cases come across but they require strong dealings under the present law.

12. As dealt before, the economic and sanitary condition in general are responsible for the infantile mortality and other results seriously affecting the intellectual and physical progress of the people. The same are unconnected with the marriage. It is futile to expect any improvement in this direction by raising the age of marriage of boys and girls, as per proposed Bill of R. S. Harbilas Sarda, M.L.A., which is against the principles of *Sastras*, *Smritis* and *Puranas*. All socio-religious questions can not be solved by the Legislatures as intended by this proposed Law, which will be more ruinous than of any benefits.

14. Women in part of this country favour consummation of marriage for their children after puberty.

15. There is no difficulty experienced in determining the age of girls in connection with offences under Sections 375 and 376, Indian Penal Code, as physical change in their body who has attained puberty will indicate her age.

16. The difficulty or margin of error would not be minimised if the Age of Consent is arisen to 14 years or even above.

17 and 18. There should be the present penalty for extra-marital offences to be dealt by the ordinary courts and as regards the cases of marital offences, *Punch* should be empowered to deal with them.

19. The Police officers must hold full preliminary enquiry in respect of evidence from the married couple and other members of the house in respect of marital offences if reported before issuing any warrants.

20. This question can not be solved by the help of legislatures when it is more or less a question of socio-religious nature and as such the subject should not be touched by any legislature but should be left with the social progress and advancement of ideas about the consummation of marriage. The age limit for the marriage of girls and boys has been advanced with a steady progress and development of the society or respective community would adjust itself to the raising of marriageable age of consummation in near future. Since the communities have adjusted themselves to the practice of increasing age limit of marriageable girls and boys within the past few years, can not the same agency advance it further, as it is every possible, to have some improvement.

21. I would prefer to rely on the progress of the social reforms by means of education and social propaganda.

**Written Statement, dated the 25th August 1928, of Miss MINA MacKENZIE, M.D., C.M., Canadian United Church Mission Hospital, Dhar, Central India.**

1. Professionally I believe the Age of Consent should be raised to 16 years.
2. (2) The circumstances which justify making an advance on the present law is that girls are not either mentally or physically developed before 16 years.
3. I think they are more frequent than come to the public notice. I cannot say whether crimes have increased or decreased with the raising of the Age of Consent to 14 years.
4. Again I cannot say—but feel strongly that the law should protect children whether crime is committed or not in defiance of it and the fear of detection and punishment will have a salutary effect.
5. Fourteen and fifteen years of age, some at sixteen; exceptional cases are earlier. Yes, I think Christians are generally later from examination of school girls.
6. (3) My experience is that there is a great laxity with regard to this. Some doubtless do come to court.
7. No. I attribute to the evil of unregenerated human nature and the absolute disregard for the sufferings of children in this connection.
8. I do not know.
9. I do not. A girl's surrounding and the habits she is forced to lead may induce puberty at an early age when she is physically unfit to be a mother and is likely to lose her own life and the child's as well.
10. Not before the age of 16 years.
11. A girl of about 12 years of age was brought to the Indore Mission Hospital while I was in charge in 1927 terribly torn and had suffered from severe hæmorrhage.
- At Fatehpur, United Province, two girls were brought to the Mission Hospital who were said to be 13 years of age who lost their lives in child-birth owing to undevelopment physically.
12. I do. An undeveloped mother physically and mentally cannot produce well developed children.
13. I cannot say.
14. I believe they have very little say in the matter. The law permits it and they act accordingly.
15. Yes, there is difficulty. Public registration of births.
16. Yes, it would be easier to tell the age at 16 years than 14 years.
20. Fixing minimum age for marriage would I think be more effective. After marriage there is little protection.
21. On both.

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**Written Statement, dated the 15th August 1928, of Mr. J. L. PRADHAN, Extra Assistant Commissioner, Buldana.**

With reference to your letter No. 42 A. C. C., dated the 25th July 1928, I have the honour to append herewith, the answers of your questionnaire, and to say that I think no useful purpose will be served by further raising the Age of Consent because it would be very difficult to detect cases in connection with husbands as in a very few cases the husbands would be exposed and only in such cases when the parents of the girls would be keen to expose it, but the present law as amended is sufficiently powerful to punish the strangers. Of course legislation as suggested in Mr. Sarda's bill is the safest remedy to stop husbands from cohabiting with their wives before

puberty, but in that case it will expose the girls of lower classes between the age of 12 and 14 to the lust of debauchees or such like men, whereas in the case of married girls there is less chance of their going astray. However this is not a serious objection to the introduction of the bill.

*Replies to the questionnaire.*

1. No.

2. Formerly there was a general practice amongst the Hindus especially in the higher castes to perform the marriages of girls at the age of 9 years or even less in order that the *Kannyadan* ceremony should be performed before they attained the Age of Puberty. This idea has now been discarded by the educated and higher classes of people and the children are now married at a higher age than before, but majority of the Hindus still continue to stick to it. In the case of Mohammadans too though the marriages before the Age of Puberty are religiously forbidden yet they also marry their girls before attaining puberty though not in such a number as the Hindus do. Therefore in my opinion an advance on the present state of law seems quite essential.

3. Crimes of seduction in this part of the country are frequent but I have noticed that the age of the girls who are seduced is generally 16 years. This evil is generally predominant in such classes where the system of marriages by *Pat* or *Mohtir* is considered to be legal, and the creator of this evil are the parents of the girls who seduce their girls to leave their husbands and to marry another for the sake of money. There are also cases in which a woman or a girl is easily seduced to go with others when she is maltreated by her husband or when her husband keeps a second wife. This kind of seduction is not considered as immoral or even condemned by such classes of people. I do not think that this kind of evil can be stopped by the proposed changes in law as it does not concern with age. Of course seduction for immoral purposes is looked down upon by every community but such cases are rare. Cases of rape too are not uncommon in this part of the country but they are comparatively less. The amendment of the law in 1925 in raising the Age of Consent has not produced any salutary effect to check the cases of rape or seduction and in my opinion there seems no necessity of taking further steps in the matter.

4. Not a single case of cohabitation between a husband and his wife before attaining the Age of Puberty has come to my notice and I am unable to say that the amendment of 1925 has had any effect in this part of the country.

5. The usual age at which girls attain puberty in this part of the country is 14 years. This differs in different castes, communities and classes of society. In well-to-do and educated classes where girls get proper nourishing food they attain the Age of Puberty even earlier, say at 12.

6. (1) No.

(2) Yes.

(3) No cases about the cohabitation of a girl before completing 13 years however come to my court. Such cases if there be any, are very rare.

7. The practice of the early consummation of marriage before or at puberty, wherever it exists is partly due to religious injunction and partly to custom. I am unable to quote any authority but it might be in the Mohammadan religious book such as "Qoran" and in such books of Hindus as "Manusmriti".

8. Amongst higher classes when a girl has not attained sufficient puberty the 'Gaona' or Garbhadan Ceremony is usually performed but it is generally performed soon after puberty. Such ceremony is not performed by the lower classes of people as far as I know.

9. The attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage but this depends upon the physical development of a girl. A girl's physical development at the age of 16 may be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. At the age of 16 years.

11. I am unable to quote any specific instance but it has come to my notice that where a mother was of weak constitution her progeny was also found weak and they both were the victims of various diseases.

12. Yes.

13. No, except in the case of Kayasthas who are now disinclined to marry their girls before they are fully developed and after they have completed their 16th year.

14. Generally the women do but not before puberty.

15. There have been no difficulties in determining the age of girls. The birth registers and the medical opinion create no difficulties in determining the age, and so also the horoscopes which the higher classes of people maintain for their children.

16. Yes.

17. Yes, I think such distinction is necessary as has been provided in section 376 of the Indian Penal Code. It is undesirable to prescribe the same maximum punishment under this section for husbands and strangers both and in my opinion the maximum sentence for husbands should not exceed two years as has been provided in this section, and for the strangers it holds quite good.

18. No.

19. There seems no necessity of any safeguards against collusion. In the case of husbands and wives collusion can never be protected and in that of strangers any safeguards, if adhered to, will not be effective at all.

20. I do not consider that penal legislation fixing a higher Age of Consent for marital cases will be more effective than legislation fixing the minimum age of marriage because in India people will not welcome such a legislation in either way but the latter course will comparatively be less objectionable.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda rather than on the strengthening of the penal law, because the former will have a more salutary effect upon the people than the latter which can easily be broken creating difficulties in bringing the offenders to justice.

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**Written Statement, dated the 16th August 1928, of Mr. KARAMALI,  
President, Municipal Committee, Chanda.**

1. Yes, there is dissatisfaction with the present law regarding the Age of Consent but it is restricted to the educated few.

2. (1) The law as amended in 1925 is not known to the public at large, specially the poor and illiterate in villages. It should be made known to the public. The object with which the law has been amended should also be widely made known.

(2) No advance is necessary at this stage.

3. Yes. Cases of rape are frequent. Raising the Age of Consent to 14 years has not succeeded in reducing cases of rape. The object of raising the Age of Consent should be diffused in public.

4. (1) As far as my enquiries go the amendment of 1925 has had no effect in protecting married girls against cohabitation within the prescribed age limit as in the low castes and in the uneducated higher castes in the interior the consummation of marriage is effected within 16 days of the girl attaining puberty. The only measure I would propose to make the law effective is to raise public opinion in the interior in its favour.

(2) This has good effect in the educated community.

(3) Yes. In educated community only.

5. In almost all castes the age at which girls attain puberty is between 12 and 14. Girls with good physique and good nourishment attaining earlier than girls in ordinary or poor health or in poor circumstances.

6. (1) I have no information.

(2) As for 4 (1) above.

(3) Yes, in all castes in the interior as mentioned in 4 (1) above if the girl attains puberty.

These cases do not come to court for fear of punishment and as they are with consent of the parents of the couple.

7. Yes. It is so said. I do not know the religious injunction.

8. Yes. It coincides with the consummation of marriage. Yes, within 16 days of attaining puberty.

9. No. It is difficult to state at what age or how long after puberty a girl's physical development is considered to be enough to justify consummation of marriage. It varies with individual cases. Generally speaking the age of 15 should be considered as the age when the development is complete to justify the consummation of marriage without injury to a girl's health and her progeny.

10. At the age of 15.

11. I know of cases of girls who died at the age of 18 of tuberclose on account of cohabitation after puberty but before full physical development. Their progeny also did not live.

12. Yes.

13. Yes. It is confined to educated people in all classes.

14. No.

15. Yes. Registration of births in a careful manner.

16. No.

17. No. I would propose rigorous imprisonment for 2 years for offences committed on a girl after the Age of Consent 5 years' rigorous imprisonment for offences between the age of 12 and the Age of Consent and 7 years rigorous imprisonment for offences committed on a girl below the age of 12 and not below the age of 9 and transportation for life for offences on girls below the age of 9.

18—19. No.

20. Public opinion as such there is none. In the interest of all it would be better if a higher Age of Consent is fixed for marital cases.

21. I would rely on social reform. Government should employ some preachers to explain the object of raising the Age of Consent.

**Written Statement, dated the 16th August 1928, of Rai Bahadur N. N. DE, Bar-at-Law, President, Bar Association, Bilaspur.**

1. There is dissatisfaction amongst the educated people.

2. It is necessary to make an advance on the present law, i.e., the Age of Consent should be raised.

3. The crimes of this nature described in this paragraph are frequent in this part of the Chhatisgarh Division, owing to the general ignorance and illiteracy; and the Amendment has not yet shown any decisive result towards minimising them. It is necessary to impart sex knowledge and necessary information for understanding the consequences of the sex consciousness, as they will conduce to minimise the offences in question.

4. It is not possible to give any definite suggestion regarding the state of the Public opinion upon the subject under discussion; the consensus of opinion seemed that the raising of age to 18 shall be effective in the protec-

tion of the married girls from the effects of early cohabitation before proper puberty.

5. The girls attain puberty when they are between 12 to 14 years of age, but this standard is always subject to change owing to the effect of the climate and the surroundings.

6. There are no cases of cohabitation before puberty but there are cases of cohabitation soon after puberty and before the girl completes 13 years but the cases of this nature have not yet come to court.

7. The practice, wherever it has come to be in existence, is not the outcome of any religious injunction. Its origin can be traced only to social customs that are in vogue in different communities from long time.

8. The Gaona or Garbhadhan ceremony is usually performed in this part of the country. It usually precedes the consummation of marriage. It is generally performed after the attainment of puberty, but not necessarily soon after it: for it may be postponed to a future date, after the attainment of puberty, on purely personal considerations affecting the family concerned.

9. The proper answer to this question can better be elicited from medical authorities and so it is not answered.

10. The opinion on this question was found to be divided. In an informal discussion on the subject, some were of opinion that 16 is the age and others were of opinion that 18 is the age when the girls can give the intelligent consent.

11. The cases of this sort have come to court but it shall be possible only for the Medical man to describe the injury and its future consequence on the progeny and the health of the "injured".

12. Yes.

13. There has been no appreciable development of public opinion or progress on the point.

14. Women favour consummation after puberty as soon as possible. This is generally the case in orthodox-families.

15. Difficulties are often experienced in determining the age. The fact of birth is usually recorded in the kotwar's book in the village and such books and other records of Age should be preserved and deposited in the Deputy Commissioner's office for reference and it is expected that this would minimise the difficulties already referred.

16. Medical men shall better be able to give opinion on this point since they shall be able to give out as to what perceptible changes occur in a girl along with the advance of age.

17. Offences of the 2 classes should be separated. The maximum punishment for extra-marital offences should ordinarily be what it is now but for marital offences, it should be a fine of Rs. 500.

18. Regarding the procedure of marital offences, it was proposed that they should be compoundable, bailable and triable by the Magistrate, 1st class. There should be lighter punishment as that of fine.

19. No.

20. The opinion seemed divided regarding the penalization of either of the alternatives and the progress of the social reform and social propaganda should be more resorted to than the strengthening of the penal law, for the attainment of the object in view.

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Written Statement, dated the 18th August 1928, of Mr. N. B. PATEL,  
Chairman, District Council, Yeotmal.

1. No.

2. Making an advance on the present Law is necessary.

3. Crimes of seduction and rape are frequent in my part. The amendment of the law made in 1925 in raising the Age of Consent to 14 years has not succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes.

4. People are ignorant of the Act and the amendment.

5. From 11 to 12 years generally.

6. Cohabitation before puberty, soon after puberty and before the girl completes 13 years, are common in my part. No cases have been chalaned.

7. The practice is against the religion but no penalty is imposed.

8. It coincides.

9. 3 years after puberty.

10. At the age of 16 years.

11—12. Yes.

13. Generally it is not excepting Brahmins.

14. Yes.

15—16. No.

20. Legislation fixing the minimum age of marriage would be more in consonance with public opinion in my part.

Forwarded to the Secretary, Age of Consent Committee with the following remarks:—

Under the proposed scheme, it would be a very good tool in the hands of the Police to defame and ruin a respectable family and when such cases go to the Court both the families would be more on enemical terms than on good terms. Besides there is no record under the present system of registration of births to show the correct age of a girl and unless the Christian name is registered 2 or 3 weeks after the birth is registered the tendency to show wrong entries in the birth register would be increased.

In short, if the Government wants to do real good in this respect in my opinion it is only possible if marriages below a certain age are penalized and the age limit should be 15 years for the girls and 21 years for the boys and also penalise cohabitation before those ages in all cases.

However, I am agreeable to be examined orally on the points stated in my above written statement and the date and place that would be fixed may kindly be communicated to me.

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**Written Statement, dated the 17th August 1928, of Dr. Anna. P. MARTIN, M.D., Mure Hospital, Nagpur.**

3. (1) Not in my experience.

5. (1) Between 12 and 13 years. (2) I do not think so.

6. (1) No.

(2) I understand that girls of good caste always join their husbands soon after puberty.

7. Yes. Mothers seem to think it is a religious injunction, but they only say it is in the Shastras.



9. (1) No, certainly not. In the case of average Indian girls about 16 years.

10. Very difficult to say as their mental condition varies so much. Some would be competent by 15 years. Often intelligence would be overpowered by on the one hand fear and on the other desire.

11. Yes. Many young wives have come suffering from abortion, or premature births, or full-time babies so weakly that they cannot survive. Also the girls require instrumental help at time of delivery on account of debility of uterine forces and this generally results in laceration of cervix, perineum and vagina.

12. Undoubtedly. Apart from physical results to mothers and children the young wife is not granted time for general education or training in case of young children. She retains ancient superstition, and is a drag on her husband and the nation.

13. Educated Indian women here are keenly interested in all such questions and anxious to remedy evils. Chiefly high class Hindus and Parsis.

14. Most of them do, because of the difficulty of keeping the girls from otherwise.

20. I consider legislation fixing the minimum age of marriage would be made effective because it is simpler and more easily understood by both parents of the girl, and less easily evaded.

21. Education and social propaganda will be far more lastingly beneficial because it will come through the consent and desire of the people, and I believe it is coming.

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Written Statement, dated the 17th August 1928, of Mr. D. W. KATHALAY, B.A., LL.B., Advocate, Dhantoli, Nagpur.

2. See answer to query No. 10.

5. A table is given at page 211 of the fourth edition of Lyon's Medical Jurisprudence published in 1909, from which it would appear that there is little difference between the ages of first menstruation in India as regards the various communities, Indians, Europeans, Europeans born in India, Jewesses, Chinese. The ages of menstruation as found in some of the countries in Europe is also given there. The menstruation begins in some cases at the tender age of 10 to 11 and is postponed sometimes up to the advanced age of 18 to 19. The average age at which the girls attain puberty may be considered to be 13 to 15.

7. Yes. The practice of the early consummation of marriage amongst Hindus is due to religious injunction. As a general rule the writers on Hindu Law contemplate marriage before menstruation takes place. At one time in India post-puberty marriages were prevalent but they came to be discontinued when it was found out that postponing marriages beyond puberty resulted sometimes in the birth of an illegitimate child. In the statement of objects and reasons for the compilation of Parashar-Smriti it is stated that one out of the various evils existing at the time was that maidens sometimes gave birth to children (सकृत् कन्या प्रसूयेते) I have not got the Smriti at hand and I quote this from memory. I will send the reference later on. I have read a report of the proceedings of the Salvation Army about two months ago in which mention is made of a similar evil even in these times. It is stated there that girls aged 12 were rescued by the officials of the Army. Prevention of the illegitimate children being born is no doubt an object to be taken notice of by the Legislators, because it would appear from the Whitaker's Almanack for 1928, page 499, that the percentage of illegitimate births in some countries, for example, Chile, goes up to nearly 35 per cent. The tables for other countries given at that page

may also be considered on this point. Hence it is stated by some authorities that "if menstruation occurs before marriage, the parents and the brother of the girl go to hell". As regards the penalty for the breach of the rule that the girl should be married before the menstruation period, it is laid down that one cow for each of the occasions of the menstruation or for all of them should be given as a gift, see Dharmasindhu, Third Chapter, page 153, 1st edition, printed in 1911 by जगद्वितेच्छ Press, Poona. This method of paying the penalty is scarcely resorted to because it brings into prominence the fact that the girl already attained puberty but the horror about hell has still its hold on the minds of several persons.

8. The Garbhadan ceremony is performed generally immediately after the attainment of puberty.

9. It is stated at page 210 of Lyon's Medical Jurisprudence that menstruation is not a sign of bodily maturity, it is in most cases merely a sign of puberty and ovulation with possible pregnability or capacity to conceive. The latter part of this question is rather difficult to answer. In Manu Smriti Chapter 9, verse 90, the extreme limit of postponing marriage after puberty is stated to three years. The principle underlying this injunction may be extended to cases where the girls attain puberty before sixteen years of age. In such a case the consummation may be postponed up to that age.

10. In my opinion a girl in India would not be competent to give an intelligent consent to cohabitation with a due realization of consequences before she is 21 years of age. According to section 19 of the Christian Marriage Act (XV of 1872) the consent of the parents or guardian of the minor is necessary for the purpose of celebrating the marriage and according to the interpretation clause in section 3, "minor" means a person who has not completed the age of 21 years. But I think that the Legislature has made a serious mistake when by enacting section 361 of the Indian Penal Code it has allowed a female above 16 years of age to give her consent for being enticed away and similarly by providing in section 375 of the same Code that she should be deemed to have consented if she was more than 14 years of age. According to section 11 of the Contract Act, a girl, who has inherited her father's property, cannot sell one acre of land for its proper consideration if she is below 18 years of age but the Criminal Law has laid down that at the age of 14 or 16 she can commit an act, by which she can bring permanent disgrace upon the whole family. It may be noticed that in section 361 of the Indian Penal Code, a female is required to be 16 years of age while a male is required to be 14 years of age for the purpose of giving the consent under that section and thus the Legislature regards that there should be a difference of two years so far as the consenting age of the males and the females is concerned. Section 11 of the Contract Act as well as the Majority Act do not draw a distinction between the cases of a male and a female so far as the majority is concerned. A boy may possess the consenting mind at the age of 18 but a girl should be deemed to possess it much later, that is, at the age of 21. This is also the age of majority when a guardian of a minor is appointed by the Court or when his estate is taken possession of by the Court of Wards.

12. Early consummation and early maternity are to some extent responsible for the high maternal and infantile mortality which is in the main due to the ignorance of the people regarding the hygiene to be observed not only in the daily routine but also at the time of confinement. Women who are 25 or 30 years of age also die on account of delivery in several cases.

17. Yes. No change should be made in the law so far as the marital relations are concerned for the present except laying down that the tender age of a girl up to 16 years may be a good defence to a suit for restitution of conjugal rights. Any change in the law in the matter of marital relations would remain a dead letter. As regards the punishment in the case of extra-marital offences, the nature and the amount of maximum punishment may be kept as it is but the minimum punishment in the case of extra-marital offences should be laid down.

**Written Statement, dated the 12th August 1928, of Raja LAXMAN  
RAO SAHIB BHONSLE, Nagpur.**

I have the honour to acknowledge the receipt of your letter No. 42 A. C. C., dated the 4th August 1928 enclosing the copy of the questionnaire on the Age of Consent Committee. In reply, I have to say that I am strongly of opinion that the Legislative Assembly constituted as it is of members of different creeds and religions is not competent to deal with Socio-religious questions concerning Hindu society. Under circumstances, I am unable to comply with your request though I have full sympathy with the objects of your Committee.

Education is spreading rapidly amongst the higher classes of the Hindu society as also progressively percolating into the Hindu mass of the lower class. This education is bound to have its effect in creating an opinion against early marriages and therefore I prefer to rely with safety on the formation of such public opinion rather than agree to expose the Hindu society to the risks of Legislation in an Assembly which is, as I have said above, not competent in my opinion, to deal with such subjects.

**Written Statement, dated the 10th August 1928, of Rai Bahadur K. G.  
DAMLE, C.I.E., High Court Vakil, Akola.**

1. I have seldom moved among the villagers and the different castes, communities or tribes forming the bulk of Indian population with a view to study the mass sentiments on the point involved in the query. Personally speaking, I have not so far heard of any dissatisfaction with the state of law as to the Age of Consent as embodied in Sections 375 and 376 of the Indian Penal Code.

2. Although the conservative majority of the Indian population may strongly advocate the retention of the present law of the Age of Consent, I am decidedly in favour of making an advance on it. Being connected for nearly 14 years with a Branch of the National Association for supplying female medical Aid to the Women of India—popularly known as the Countess of Dufferin Fund and having had close experience of its working, I am convinced that an early consummation of marriage has alarmingly ruined the growth of womanhood in India. The huge premature loss of life among young mothers in India is medically traced to the widespread cause of sexual intercourse at an immature age. The reports of medical institutions afford ample statistical information in proof of this statement. For the full development of human race, parties of both sexes must be fully grown up before they indulge in carnal pleasures. Early marriages so long encouraged by social customs are mainly responsible for the steady deterioration in physique and health of each successive generation in India. This social evil or disease is a great menace to Indian progress. This root-evil requires to be eradicated at all cost. Ignorance, superstition and innate credulity of the masses, account for the survival of the evil. In these days of world-wide progress and civilization, if India is anxious to deserve due recognition as an integral part of a Commonwealth of civilized and powerful nations on the globe, it is imperative that all those social evils which eat up the growth of Indian manhood as well as womanhood—must be eradicated. I am emphatically strong on this point on economic, moral, physical and social grounds.

3. I have no personal information to offer on the subject involved in this query. In this connection, I would humbly invite the attention of the Committee to a small leaderette under the Caption "Kidnapping girls" published at page 8 of the Times of India (Column 4) dated 8th August 1928 (Wednesday) and possibly the accounts of the nefarious organizations in Sind, Marwar, Gujrat and the Punjab, in the possession of the Sind Police might throw much light on the subject. Similar inquiries pursued by the

Criminal Intelligence Department or the Police departments of the several presidencies or provinces might furnish valuable information.

4. For want of direct information on the points raised in the query, I cannot hazard an opinion. In rural areas in India, illiteracy is the rule and not, as in Western countries, the exception. The Royal Commission on Agriculture has pronounced this verdict (*vide* page 478, paragraph 393, under Chapter XIV of the Report of the Royal Commission on Agriculture in India—1928). The masses are too illiterate to know from books, reports or newspapers what changes have been made by the Indian Legislature in laws affecting their marital state. It is thus practically difficult to ascertain what the mass opinion is on the three aspects of the question put in the query. Educated opinion which always counts, everywhere, is definitely in favour of postponing marriages beyond 13. Beyond such vague expression of ideas, I am not in a position to offer a definite opinion on any of the three points raised in the query.

5. In Berar and Khandesh, the girls generally attain puberty between 14 and 15 years of their age, almost in all classes of society or castes or communities.

6. So far as I know in Berar and Khandesh—

(1) Cohabitation is not common before puberty.

(2) It takes place generally soon after puberty.

(3) In rare cases, it might be taking place after puberty and before the girl completes 13 years. Such cases (last) rarely come to Court.

7. I would attribute the practice more to superstition or credulity than to any religious injunction. I have not tried to find out if any religious injunctions are enjoined on the subject.

8. 'Garbhadhan' ceremony is performed among the orthodox Brahmin families. It is generally performed after the attainment of puberty and within a fortnight or three weeks of the first passing of menses.

9. I do not consider the attainment of puberty as a sufficient indication of physical maturity to justify consummation of marriages. I know, on the contrary, that weak girls often attain puberty earlier.

Personally I would advocate 18 years as the normal age limit for sufficient development of a girl for the purpose of this question.

10. Although after 16 years of her age, a girl would be intelligent enough to understand the nature of a sexual intercourse, her consent cannot be called intelligent enough, as she is really unable to form an adequate judgment so as to realise all the consequences of the act.

11. I have not come across any case of the kind put in the query.

12. It is my definite opinion supported by actual statistical reports published by the persons in charge of medical relief, that early consummation and early maternity are directly responsible for high maternal as well as infant mortality in India. Intellectual and physical development is likewise stunted if not shattered by this cause.

13. As stated above, while furnishing an answer to query No. 4, it is difficult to state if public opinion in the sense of 'mass opinion' has advanced further in favour of an extension of the Age of Consent since 1925. The educated classes generally favour an advance in the age limit.

14. Female education is of slow growth in Berar. The few educated ladies confined to urban areas hold advanced views in the matter; but speaking of women generally, in Berar and Khandesh, they are indifferent or rather are unable, to formulate an intelligent view on the subject, for want of education.

15. I had had no case during my practice for the last 34 years in which the difficulties pointed out in the query arose. I cannot, therefore, offer any suggestion for the solution of difficulties—such as they may be.

16. I would favour the raising of age limit to 16 to minimise the difficulties if any existing.

17. Certainly, I would separate extra-marital and marital offences into different offences. I would penalize the former offence by prescribing imprisonment, simple or rigorous—not exceeding two years or fine or both, as punishment for it. For the latter offence a fine not exceeding Rs. 200 would be ample.

18. For extra-marital offences, I would make them cognizable and non-bailable and non-compoundable. For the other kind of offence, it may be treated as a non-cognizable one and bailable and compoundable. The difficult procedures for cognizable and non-cognizable offences as prescribed by the Criminal Procedure Code will do. Offences within the marital state should not be taken cognizance of by a Criminal Court except on a complaint of the parent of the girl permitted by the District Magistrate, within whose jurisdiction the alleged offence took place.

19. Beyond the safeguards suggested in my answer to query No. 18, nothing more would be needed in my opinion.

20. According to my opinion, if the Legislature decides to penalise an act, by fixing a higher Age of Consent for marital cases, it will unsettle public mind more than if it fixes a minimum age of marriage. I am speaking for Berar and Khandesh.

21. From my experience of public life, the strengthening of penal law is the surest and prompt remedy to secure the desired object. Education and social propaganda give rise to different courses of action sometimes opposed to the very object in view. It means leaving the welfare of society to the tender mercies of irresponsible persons who may or may not exert themselves with sufficient eagerness and will to attain the desired object.

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**Written Statement, dated the 12th August 1928, of Mr. G. V. DESHMUKH, Bar-at-Law, Civil Station Nagpur.**

1. Yes. I take the strong public agitation in favour of Mr. Sarda's Bill as an indirect proof of dissatisfaction with the existing state of law.

2. I am not in favour of retaining the law of the Age of Consent as it is and my reasons for making an advance on the present law are—

(A) girls below sixteen are not intelligent enough to understand implications of consent for cohabitation.

(B) Considerations for the health of the girls.

(C) To deter offenders from committing offence of rape by enlarging sphere of prosecution and to give very little opportunity to escape punishment of law.

3. It is difficult to say whether crimes of seduction or rape are frequent or not in my part of the country. From the statistics in the Criminal Judicial Administration reports of this Province after 1925 it would appear as if the cases of rape outside the marital state are increasing. I think the limit of Age of Consent should be fixed at eighteen. More cases would come under the operation of law with a less chance of getting off.

4. The amendment of 1925 raising Age of Consent within the marital state to 13 years has produced no appreciable effect on any of the points mentioned in the question. I think Mr. Sarda's bill which has got a good public support is the only way to protect married girls against cohabitation at an early age.

5. The usual age at which girls attain puberty is 13. It differs by a year or two in such communities or castes which have not taken to the custom of child marriage.

6. Cohabitation before puberty is very very rare; but it is common soon after puberty. Cases come to court but these are outside the marital state

and not within. I have not heard of a case of rape within the marital state coming to court.

7. I have not come across any religious injunction about the early consummation of marriage before puberty; as for after puberty, the injunction is to be found in Smritis of Parahsar, Deol, Yama and Baudhayan. It is laid down that if a husband does not cohabit with his wife after puberty he commits the sin (not the offence) of infanticide. Exceptions to this rule have also been laid down by Manu and Wyas. These are imprisonment of the husband, mourning, travelling, and a holy day. Even if a husband does not cohabit with his wife after puberty, this sin can be excused by "Kricharadhi Prayaschita" and also by making a gift of a cow to a Brahmin and performing the ceremony of Punsawan.

8. Garbhadan ceremony is usually performed in this Province. It is performed after a fortnight after the attainment of puberty by a girl and it coincides with the consummation of marriage.

9. I do not consider the attainment of puberty by a girl as a sufficient indication of physical maturity to justify consummation of marriage. She must reach the age of fifteen at least for this purpose.

10. An intelligent consent to cohabitation with a due realization of consequences could only be given by a girl after she completes the age of sixteen.

11. I have seen girls of fifteen and sixteen suffering from consumption. Consummation of marriage of girls at the age of 14 to 16, when it leads to an early conception, results in wrecking her health completely after delivery.

12. I consider early consummation and early maternity as partly and not wholly responsible for high maternal and infantile mortality. The growing poverty of the people, the congestion in industrial towns, lack of physical exercise, inability to secure competent medical help, and ignorance of girls of how to look after themselves and their children are factors which have a considerable bearing on high maternal and infantile mortality. This high rate of mortality no doubt affects the intellectual and physical progress of the people.

13. Public opinion now is strongly in favour of the Age of Consent in extra-marital cases being extended to even twenty. As regards marital cases, public opinion is not in favour of any extension of the Age of Consent; breach of which would constitute rape under section 375, Indian Penal Code; though not only the educated but illiterate classes also are in favour of marriage of girls after the age of fourteen to sixteen,—indeed sixteen is becoming very common amongst the educated middle class.

14. Yes, excepting educated women who are not in favour of early consummation of marriage for their children.

15. The medical evidence to determine age is not satisfactory. Illiterate classes and villagers do not keep horoscopes, and the birth and death register does not always help prosecution. In short there is a difficulty in determining age. I would fix the limit of the Age of Consent in extra-marital cases as eighteen to get over the present difficulty to determine age.

16. Yes.

17. I have already said that marital offences, if there be any, do not come to court. So the section of the Indian Penal Code so far as this offence is concerned is a dead letter. However there is a remote possibility that it may act as a check on the husband of the girl. The punishment that is provided at present in extra-marital cases is quite proper and should not be modified.

20. I think legislation fixing minimum age for marriage would be more effective than penal legislation fixing a higher Age of Consent for marital cases for the very simple reason that these do not come to court if there be any and it would be in consonance with public opinion in this Province.

21. I would rely on both the strengthening of the penal law as well as the progress of social reform by means of education and social propaganda to secure the object in view. And if it is a question of preference, I will

prefer Penal Law; for the progress of education is very slow and there are no powerful agencies to carry on a sustained social propaganda.

**Written Statement, dated the 19th August 1928, of Mr. C. J. IRWIN,  
C.I.E., I.C.S., M.L.A., Commissioner, Jubbulpore Division.**

1. Such dissatisfaction only exists among progressive Indians. I have not discussed the matter with Indians to any extent. The question would only arise, in the case of Europeans, as regards extra-marital consent, where most people hold that the age should be not less than in English Law.

2. (1) There are no circumstances in my opinion which justify the retaining of the present law of the Age of Consent except the difficulty of enforcement of any more stringent law.

(2) I understand scientific opinion strongly supports the advance to not less than 14.

3. I have consulted the Deputy Commissioners of my division on this question. I enclose copies of their opinions with regard to this question and questions Nos. 15 and 16 as I think they may interest the Committee. On the whole I do not think that the amendment to the law made in 1925 has produced any noticeable effect in my division. The principal point is probably made by the Deputy Commissioner of Mandla, who considers that the higher you can raise the Age of Consent, the easier it will be to prove cases concerned with immature girls below that age.

4—5. I have no information which would enable me to answer these questions.

6. I have no information on the subject, but I have never known of a case coming to court of rape by a husband.

7—12. I am not able to express any opinion. These questions should be answered by Hindus on the one hand and medical men on the other hand.

13—14. Advanced public opinion is, among both sexes, in favour of an advance in the Age of Consent, but it must be recognized that such opinion is only that of a small proportion of the population.

17. I agree that extra-marital and marital offences should be separate, and the extra-marital age should be higher, as is, I believe, the case in most countries. I see no reason, except extreme Hindu opinion, which the existence of this Committee seems to me to indicate will not be considered, to differentiate in punishment between intra and extra-marital offences. The penalty of 10 years' imprisonment might apply to both.

18. I do not think on the whole that any difference should be made in the procedure of trials for either type of offence. If a difference was made so as to favour the accused in a trial for an intra-marital offence people would be led to believe that this offence is the less which it is not.

19. I can think of no safeguards beyond those existing. As long as public opinion does not condemn the practice of intercourse with children, or at the same time does not regard perjury in court more seriously than in the case at present, the difficulties suggested will always exist.

20. I have not consulted local opinion as I have not had the time, but obviously the question to be decided is how the penal legislation can be enforced. On the whole in view of the fact that the Hindu marriage customs enjoin that the ceremony of marriage, as apart from consummation, should be performed at a very early age, I do not think that it is desirable to fix a minimum age for marriage. The whole point is consummation and this is regulated by the law of the Age of Consent. In the latter case what is required is a deterrent penalty which will be enforced.

21. Legislation and social reform must go side by side in my opinion since no Government will be able to enforce a progressive law without equivalent social progress. I have pointed out that the prosecution in court of cases

of rape by a husband is almost unknown. This is an instance of what I have said, since there can be little doubt that such cases are not altogether infrequent in actual practice.

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**Written Statement, dated the 11th September 1928, of Mr. M. B. KINKHADE, Additional Judicial Commissioner, Nagpur.**

1. The first Age of Consent Bill by Mr. Malbari provoked a storm of opposition but thereafter the educated society never felt any throb about this question. For the masses, neither the old law nor the amendment of 1925 has in any way made any impression on them. In my experience there has been no case of a girl below 13 or 14 coming before the Court on ground of sexual intercourse; while in the higher and more educated classes it is extremely rare to have sexual intercourse before that age. There is some reason to believe that in the deeper strata of society there is intercourse at times after the girl attains her 12th year, but the knowledge of law has not yet touched those strata nor has the power of law affected their social life. Hence there has been, so far as I know, no occasion for any manifestation of disapproval about the existing law.

2. The Age of Consent may be advanced to 14 in the case of connubial intercourse, and 16 in the case of non-marital intercourse. The reason for this advance is that medical opinion and the present consciousness of the people justify it.

3. The law of 1925 was passed only three years ago. In my opinion that period is too small to justify the expression of any opinion, the more so, as the law has not yet become sufficiently known to the general public. There is no reason to believe that crimes of seduction and rape are more frequent in Central Provinces or Berar than in other parts of India.

4. Consummation, though not marriage, is, generally, after the age of 13, and, in my opinion, no steps are required to make the law of marital intercourse more drastic or effective than at present.

5. The age of puberty is about twelve in Chhattisgarh and other districts of hot climate, fourteen generally in Berar tracts, and fifteen in Bundelkhand tracts. It is a matter of common knowledge that cold climate delays puberty and hence the delay in Bundelkhand. The warm climate of Chhattisgarh and Nagpur Divisions in combination with age-long prurient instincts hastens the age of puberty as compared with the average age in Berar. Puberty makes its first appearance earlier in town girls than in the country side girls.

6. Cohabitation is common immediately after the girl attains puberty, which event is rare before her 13th year. It is rare before that year or before she attains puberty, and no such cases have come to Court, because no one is interested in voluntarily exposing any breach of the law in this respect.

7. Amongst Brahmins, cohabitation with the Garbhadan ceremony commences immediately in the first fortnight after puberty owing to wide-spread religious feeling based on Shastric texts meaning that non-consummation would result in the destruction of a new soul awaiting birth. The practical reason, however, is the innate desire of the female society to see a new girl initiated into married life as soon as she attains puberty. There, the cohabitation begins immediately after puberty though the Garbhadana ceremony is in modern days very often dispensed with or indefinitely postponed.

8. I am not sufficiently acquainted with the details of the Gaona ceremonial. In the Maratha country, which is mine, Garbhadana according to the custom of the twice-born classes is performed within a fortnight after the first menstruation, because, elderly persons and especially female relatives and widows of the household, do not take water at the hands of the girls for culinary purposes until they are purified by this ceremony. Con-





an early meeting of the pair not with any idea of ultimate physical break down, but through a sense of jealousy that their sons would remain their children no longer, but would pass early under the insidious domination of the young bride and her paternal relatives. Fathers of the sons would rather try to induce the women to postpone the consummation by putting off the ceremony, if it can be helped, but would ordinarily not make it impossible by taking proper steps to guard against stealthy consummation, although they would not desire to actively encourage it.

15. In civil cases involving a point of majority, I have seen doctors expressing their liability to error about age by two to five years in case of persons on the verge of majority. What I have known of criminal cases, as a judge, leads me to think that medical evidence would be an absolutely unsafe and unreliable guide. The only proper guide is Birth Registration, but that shall have to be more formal and reliable in India before it could be made the basis of wholesale prosecution. I say this about girls on the boundary line of the legal age for cohabitations and not about those who are so patently below that line that even laymen would be able to give a correct opinion about their age. Uncertainty of getting reliable data for determining the correct age would lead to perjury and forgery and unnecessary botheration due to frivolous and false prosecutions being started from purely malicious motives, or, greed of extorting money from a richly placed son-in-law.

16. The margin of error would be a constant factor whether the statutory age be 13 or 14.

17. I would separate the two categories and make the marital offence liable for very lenient treatment because (a) it is likely that the wife herself may frequently solicit, and may go wrong if denied, (b) the opportunities are not only numerous but almost forced on the pair and it is unnatural to punish for the inevitable consequences of the pair living together, (c) the immunity of married young males having connubial company from going astray and contracting horrible diseases should not be overlooked, (d) as a result of the break up of the joint family system and the spirit of independence or wilfulness which is making its appearance to a very large degree in young girls, their only choice of residence is with the parents or with the young husband and the latter is much more preferable. I further think that section 376 should stand as it is except that the age be raised. Even two years' maximum imprisonment for marital offence is hard and more than sufficiently educative, although it might be said that it prevents the husband to return to a non-maturer wife, unless as the result of the prosecution he wants permanently to discard her as the cause of all his present misfortune. This will cause an irreparable estrangement of feelings between the married couple and create hatred and even prove ruinous to their future life. If the principal object of the imprisonment is to minimise the chances of cohabitation being resumed before the wife attains the statutory age, I think that object will be gained by awarding even simple imprisonment for a period which may not exceed the difference between the wife's actual and statutory age, if the other facts proved in any particular case call for the imposition of the sentence of imprisonment in preference to one of fine. Section 376A should either not be introduced or a sentence of deterrent fine will be enough in the present state of society.

18. In the case of marital offences, and even in the case of non-marital ones, there should be no cognizance except on the complaint of the girl aggrieved or of some person who would have been entitled to the guardianship of her person had she not been married. There should be no Police interference whatever, nor that of malevolent strangers, or else extortion and blackmailing will find great encouragement. These offences no doubt require stamping out, but the sanctity of the marriage tie and the happiness of the couple also are of paramount importance. Whether the rape be by the husband or by a stranger, the reputation of the girl and her family is blasted for ever by such public proceedings, the more so, if she is a consenting party. The pathos of the double punishment to the girl is entirely over-

looked by legislators. I would suggest the formation of a Matrimonial Jurisdiction Board of three persons in each district, which should in the first instance examine all such cases on complaint by the girl or her own relatives. It should have the power to compound a case and put the parties on terms, or alternatively to permit a formal prosecution. These proceedings must always be held in chambers and not be open to the public to attend.

19. I cannot suggest any safeguard against collusion. Those already existing for improper prosecution or extortion, will be enough for these cases also. But it may be expedient to empower the Magistrate to enforce payment into court by the complainant other than the wife, of a sum sufficient to compensate the opposite party for the costs that may be awardable if the prosecution fails.

20. I believe that the educated classes of modern times and even myself would prefer to raise the Age of Consent than to fix a minimum age for marriage. The responsibility for marriage was formerly shared with other relatives, but is now borne entirely by parents except in the rare cases of marriages of grown-up persons known as **ग्रौढ विवाह** in which the couple makes its own selection. It is undesirable that where the parents bring about the marriages they should be handicapped by outside legislation in their well-intentioned and *bona fide* endeavours to secure the welfare of their children.

21. I would rely more on the progress of social reform than on State interference at the instance of men who would shirk the trouble of propaganda.

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**Written Statement, dated the 10th September 1928, of the District Council, Bilaspur.**

Referring to your letter No. 42-A. C. C., dated 26th July 1928, regarding Age of Consent, I have the honour to inform you that the subject was laid before the meeting of this Council held on 29th August 1928 for discussion. This Council supports the principle of the Bill.

A copy of resolution of the Council is annexed for favour of your perusal.

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**Written Statement of Mr. N. K. MOHGAONKAR, B.A., B.L.,  
Additional District and Sessions Judge, Yeotmal.**

1. I am not aware of any.

2. So far as the substitution of 16 for 14 in clause 5 of section 375, Indian Penal Code, is concerned, I think, the change would be desirable. An ordinary girl under 16 generally does not attain the stage of discretion so as to know the consequences of the heinous act which she may be induced to enter into.

(b) So far as the addition of the new section 376A and the omission of the corresponding clause from section 376, Indian Penal Code, are concerned, I don't think any alteration is necessary inasmuch as the amendment of the sections in 1925 had not had sufficient trial.

3. There have been large number of rape cases in this District during the last year. I am told this has however nothing to do with the changes made in the Law in 1925. Some of these cases were in the nature of boyish franks. I believe the raising of age to 14 and its further raising it to 16 may have some effect in checking such crimes hereafter. I don't think it can be urged in all seriousness that these penal provisions would put an end to all

crimes of this particular type. One cannot improve the morality of a people by the agency of the Police or the Magistrates.

4. I don't think the amendment of 1925 had any effect as mentioned in the question. I think propaganda by way of social reform would be more effective than such penal provisions. So far as the higher educated classes are concerned the marriageable age has already gone up to 14 to 18 and in some cases even above 18. Besides the above propaganda I would suggest the following other remedies:—

- (i) As far as possible granting of scholarships and prizes should be confined to unmarried students both in High Schools and colleges.
- (ii) Amongst the backward classes a tax of Re. 1 or so should be collected for every child marriage and this should be ear-marked for a fund out of which rewards ranging from Rs. 5 to 10 for every grown-up marriage should be awarded.
- (iii) Grown-up unmarried girls from backward classes should be given better facilities for education in schools such as freeships, etc.
- (iv) Grown-up unmarried girls from backward classes should have a preferential claim for treatment in free wards in dispensaries for females.

5. Girls attain puberty in this part of the country ordinarily at the age of 13 or thereabout. I don't think this differs in different castes.

6. Cohabitation is not common in these provinces before puberty. It is common however soon after puberty. It is not common before the girl attains 13 years.

(b) I have not seen any of such cases coming to court.

7. Yes, early consummation marriage at puberty is due to religious injunction. This injunction however is now followed more in its breach than in observance. The penalty for its breach is a certain Prayaschit performance of which may cost a few rupees.

8. Yes, Gaona or garbadhan is usually performed in these provinces. It coincides with the consummation of the marriage and is performed generally within about a month after the attainment of puberty.

9. No, attainment of puberty is not a sufficient indication of physical maturity. I think physical development of a girl may be considered to be enough to justify consummation at the age of 16 to 18.

10. At the age of 16.

11. I had had no occasions to come across any such cases.

12. Yes, to some extent.

13. Public opinion has been progressive in these matters amongst the educated classes but the amendment of the law in 1925 had nothing to do with it.

14. Yes, mostly in backward classes and some ladies in most conservative families of higher classes too. This latter class however is getting thinner and thinner every day.

15. Yes, many a time. I would suggest the following steps to overcome these difficulties:—

- (a) A new column should be opened in Kotwar's books where the name of the new girl born should be entered within a month after the entry relating to the birth is made.
- (b) Such books should always remain under lock and key in the custody of responsible village officers.
- (c) Such books should be deposited in the District Record room at the close of every year.

16. No. Difference of age between 13 and 14 cannot usually be accurately determined. It is on this ground that I would oppose the addition of the new section 376 (A).

17. Yes. Punishments as provided in the existing law are suitable.

18. A provision should be made in law that the offences within the marital state should be tried in camera at the discretion of the magistrate.

19. Such cases would be extremely rare and thus no safeguards are necessary.

20. (1) No.

(2) Fixing the minimum age of marriage would be more in consonance with public opinion in these provinces.

21. I would rely more on the progress of the social reform by means of education and social propaganda than on the strengthening of the penal law.

**Written Statement, dated the 22nd November 1928, of the Municipal Committee, Bilaspur.**

*Copy of Replies to the questionnaire serially from Bar Association, Bilaspur.*

1. There is no satisfaction amongst the educated people.

2. It is necessary to make an advance on the present law, i.e., the Age of Consent should be raised.

3. The crimes of this nature described in this paragraph are frequent in this part of the Chhattisgarh Division owing to the general ignorance and illiteracy; and the amendment has not yet shown any decisive result towards minimising them. It is necessary to impart sex knowledge and necessary information for understanding the consequences of the sex consciousness as they will conduce to minimise the offences in question.

4. It is not possible to give out any definite suggestion regarding the state of the public opinion upon the subject under discussion; consensus of opinion seemed that the raising of age to 18 shall be effective in the protection of the married girls from the effects of early cohabitation before proper puberty.

5. The results attain puberty when they are between 12 to 14 years of age but this standard is always subject to change owing to the effect of the climate and the surroundings.

6. There are no cases of cohabitation before puberty, but there are cases of cohabitation soon after puberty and before the girl completes 13 years, but the cases of this nature have not yet come to court.

7. The practice, wherever it has come to existence, is not the outcome of any religious injunction. The origin can be traced only to social customs that are in vogue in different communities from long time.

8. The Gaona or Garbhadan ceremony is usually performed in this part of the country. It usually precedes the consummation of marriage. It is generally performed after the attainment of puberty but not necessarily soon after it: for it may be partitioned to a future date after the attainment of puberty, on purely personal considerations affecting the family concerned.

9. The proper answer to this question can better be elicited from medical authority and so it is not answered.

10. The decision of this question was found to be divided. In an informal discussion on the subject, some were of opinion that 16 is the age and others were of opinion that 18 is the age when the girls can give the intelligent consent.

11. The cases of this sort have come to court but it shall be possible only for the medical man to describe the injury and its future consequences, on the progeny and the health of the injured.

12. Yes.

13. There has been no appreciable development of public opinion or progress on the point.

14. Women favour consummation after puberty as soon as possible. This is generally the case in orthodox families.

15. Difficulties are often experienced in determining the age. The fact of birth is usually recorded in the Kotwar's book in the village and such books and other records of age should be preserved and deposited in the Deputy Commissioner's Office for reference and it is expected that this would minimise the difficulties already referred.

16. Medical men shall better be able to give opinion on this point. Since they shall be able to give out as to what preceptible changes occur in a girl along with the advance of age.

17. Offences of the classes should be separated. The maximum punishment for extra-marital offences should be separated. The maximum punishment for extra-marital offences should ordinarily be what it is now but for marital offences it should be a fine of Rs. 500.

18. Regarding the procedure of marital offences, it was proposed that they should be compoundable, bailable and triable by the Magistrate, 1st class. There should be lighter punishment as that of fine.

19. No.

20—21. The opinion seemed divided regarding the penalization of either of the alternatives and the progress of the social reform and social propaganda should be more resorted to them the strengthening of the penal law for the attainment of the object in view.

**Written Statement, dated the 15th September 1928, of Mr. C. S. FINDLAY, I.C.S., Judicial Commissioner, Central Provinces, Betul.**

1. I can only talk for my own Province in this matter. So far as I know, there is no general dissatisfaction with the law, as it stands at present, as to the Age of Consent. At the same time, there is a large and increasing body of educated opinion, which is in favour of an increase in the age. I further do not believe that, unless any very abrupt change is made, any such amendment would lead to general dissatisfaction or to any appreciable agitation.

2. I am in favour of advancing the age in section 375 to 16 years of age for the simple reason that, on physiological and moral grounds, I believe it to be highly prejudicial for any child in India under 16 years of age to indulge in sexual intercourse. As regards the proposed new section 376-A, the same grounds would, in my opinion, justify the age of 16 being adopted there also, but I fully realise that, under present conditions, such an abrupt step in the case of married children will be impracticable.

3. Crimes of rape are fairly frequent in these Provinces, particularly in the more backward parts like Chhattisgarh. They are very largely confined to the most ignorant type of agricultural labourer and the like, and a large percentage of these crimes occurs on the part of Chamars and aboriginals. Few cases of improper seduction of girls for immoral purposes have come under my notice, but I am unable to be dogmatic with regard to this part of the question. So far as I could gauge the situation, the amendment of the law in 1925 has made little or no difference in the way of preventing or reducing the cases of rape outside the marital state. It is even yet, however, too early to gauge broadly the effects of the amendment of 1925, but there has been an undoubted increase in the number of prosecutions since the amendment was effected. In a period of some 5 years before the amendment there were 277 prosecutions and 145 convictions for the connected type of offence. In a period of some 2 years since the amendment there have been no less than 185 prosecutions and 115 convictions.

4. For a British Officer the fourth question is one which it is difficult to answer dogmatically, but, so far as my experience goes, the amendment of

1925 raising the Age of Consent within the marital state is beginning to have some effect in all the three directions mentioned in the question.

9. I am strongly of opinion that the mere attainment of puberty is no sufficient indication of the attainment of a degree of physical maturity sufficient to justify consummation of marriage. The question involved is really one for a medical man, but I should be surprised if all the best medical opinion would not bear me out in my view that a period of at least two years should pass after the attainment of puberty before consummation of marriage should take place.

10. It does not seem to me possible to give any precise reply to this question. An educated girl in India might well, even at 16, be competent to give an intelligent consent to cohabitation with a due realization of its consequences; as regards most of the people, however, the same could not be predicated.

12. Again, this is a matter on which medical opinion would be particularly valuable, but, in my own experience, I have not the slightest hesitation in saying that early consummation and early maternity are very important factors in producing the high maternal and infantile mortality which exists in India. The average child-mother, after the stress of child-bearing, has neither the energy, experience nor knowledge necessary to look after her own health or that of her child.

13. So far as my experience goes, there has been some development of public opinion in these Provinces in favour of an extension of the Age of Consent, but such development is of a lamentably limited nature and is practically wholly confined to the more educated and forward classes.

17. On *a priori* grounds it would, in my opinion, be desirable to lump marital and extra-marital offences together, but, for reasons of policy, I believe any such step would be undesirable and impracticable at the present moment. We have a great dead-weight of tradition, custom and prejudice to get over in such a matter and, until there has been a great development in education and a great uprise in the social state of the people, I do not think it would be advisable to lump marital and extra-marital offences together for the purposes of the Penal Code.

18. I do not see any necessity for the procedure in offences respectively within and without the marital state being differentiated.

20. For my own part, under present conditions, I do not think in these Provinces it would be desirable, even if feasible, to fix the minimum age of marriage by legislation. The motto *festina lente* seems to me to lay down the best principle to be followed in this connection, and I would prefer for the present to progress by gradually raising the age in sections 375 and 376.

21. I look on the two methods outlined in this question as not necessarily being exclusive one of the other; they are rather supplementary. I regard the progress of social reform as the more weighty factor in the matter, but, at the same time, by gradually raising the age in the sections referred to, we are helping to arrive at the desired end.

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**Written Statement, dated the 21st August 1928, of BALAJI VINAYAK  
RAO BUTI, Banker and Landlord, Sitabuldi, Nagpur.**

1. No dissatisfaction with the state of law.

2. (1) I am inclined to think that the present Age of Consent should be retained. The society has come to realize that the consummation of marriages of girls and boys should be brought about when their physique is properly developed and child marriages are discouraged as far as possible. When the physical condition of the girl or the boy is not such as to admit of the consummation of marriage even if the prescribed age is reached, the parents or the relations whoever they may be, would not permit intercourse until the couple is in a fit state of health. I am of opinion that there should

be no legal restriction to the cohabitation by husband with his wife if the present conditions are fulfilled. I belong to that class of people who are disposed to regard marriage as one of the sacred institutions not to be made the subject of penal legislation. As society advances and people come in contact with other races they are naturally led to improve their own condition by making some social advance. Even if any legislation is undertaken it is likely to remain a dead letter.

3. There are cases of seduction or rape in my part of the country but not frequent. The amendment of the law in 1925 had no effect either way. The time that has elapsed since the amendment was not sufficient to make the change (in whatever direction it might be) appreciable in order to enable me to give a definite opinion on the subject.

4. The change in the Age of Consent within the marital state as brought out by amendment of law in 1925 was not universally appreciated. There might have been cases (although not brought to light) where the law was infringed. It is not the change in the law that is likely to protect the married girls from cohabitation before the prescribed age limit is reached. The society as at present constituted is prone to think that the child marriage should be discouraged and many people would not even care to observe the age limit as laid down in section 375, Indian Penal Code, in regard to the cohabitation in the marital state if the physical condition of the girl and the boy is no obstacle to the consummation of marriage after puberty. In some cases marriages were postponed but not because the age limit as given in the aforesaid section of the Penal Code was respected or marriages of girls had to be protected from cohabitation but because no suitable match had been found or the circumstances of the family did not permit expenses being incurred.

5. The usual age at which girls attain puberty in my part of the country is 14 years. As far as I know this does not differ in different castes, communities or classes of society.

6. Cohabitation is common in my part of the country soon after puberty and I suspect in some cases even before the completion of 13 years. I have not heard of any such cases being put up in court.

7. I do not attribute the practice of early consummation of marriage at puberty to religious injunction.

8. *Garbhadan* ceremony is performed in my part of the country and it coincides with the consummation of marriage. It is performed 16 or 17 days after the attainment of puberty if there are no impediments in its performance.

9. I do not subscribe to the proposition that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In the society in which I live 14 years is the proper age-limit for consummation of marriage even if puberty is attained earlier.

10. The girl is in my opinion competent to give an intelligent consent to cohabitation at 14.

11. I have not come across any case contemplated in this question.

12. I consider early consummation and early maternity responsible for infantile mortality. By this I mean consummation of marriage before the age of 14.

13. Persons who have got reformed ideas think that the Age of Consent in marital cases should be 16 years in the case of a girl and 20 years in that of a boy—so also in extra-marital cases. Persons who belong to the orthodox class of Hindus, maintain that the present age limit 14 and 18 respectively is quite sufficient.

14. If consummation at 14 years is considered early then woman in my part of the country may be considered to be in favour of this consummation for their children.

15. Difficulties are experienced in determining the age of girls in connection with offences, under sections 375 and 376, Indian Penal Code. In



order to minimise these difficulties I would suggest that the record of births as maintained by the Municipal Committees in urban areas and that maintained by the Police in rural areas should be accurate and well preserved for a period of at least 20 years and the father of the child born should be compelled to make a report in writing with regard to the birth of a child which should be carefully kept in the office along with the office register. The Medical Certificate of age which is only a guess work should not be accepted unless it is corroborated by the aforesaid record.

16. Unless the records as stated in answer to question No. 15 are properly maintained the raising of the Age of Consent to more than 14 years would not remove or minimise the difficulty in determining the age.

17. I would separate as at present extra-marital and marital offences into different offences. I would allow the punishment now prescribed by the Criminal Procedure Code Schedule of extra-marital offences to remain as it is and that for marital offence should be reduced to one year or with fine or both.

18. I would allow the present procedure to remain intact.

19. I can suggest no safeguards beyond those existing at present.

20. I do not think that penal legislation fixing a higher Age of Consent is likely to be more effective.

21. As already stated above I am of opinion, it is better, that society should be educated by social propaganda to secure the object in view than to bring about any reform by penal legislation.

Written Statement, dated the 12th August 1928, of Rao Bahadur  
R. V. MAHAJANI, President, Bar Association, Akola.

1. There is some dissatisfaction felt with the state of the law as to the age of consent as contained in section 375, Indian Penal Code, in so far as the age of consent outside the marital state is concerned. People generally feel the necessity of protecting girls below 16 against outrages from strangers. They are not however anxious to raise the age of consent in the case of a *wife*.

2. I am in favour of raising the age of consent outside the marital state up to the age of 16, in view of the immature understanding of girls in India and in view of instances of outrages against the girls below 16 of which one hears constantly. I am not however in favour of extending the present age of consent in the case of a *wife* for the following reasons:—

- (i) The raising of the age of consent to 14 shortly after the recent amendment, is not necessary.
- (ii) The medical works on Anatomy as well as Legal Jurisprudence show a sure naked eye test for determining as to whether a girl has passed her 13th year or not. But the test for determining as to whether she has passed her 14th year as afforded by the above authorities is not so reliable. The recent test afforded with the help of the X-rays apparatus though reliable, is a very complicated one.
- (iii) The entries as regards birth from the vital statistical Registers are often unsatisfactory and even though they may be properly maintained, they do not afford an undisputed proof in view of the fact that the name which is given to a child subsequently does not appear there.
- (iv) There is also no system of having a horoscope prepared at the birth of every child so as to afford an undisputable proof of age in case a dispute arises afterwards.
- (v) As marriages are never settled after ascertaining the age of a girl correctly, the proposed amendment may give a handle to

the dissatisfied relations of the girl who are anxious to get a divorce from the husband, to harass the latter by trying to bring a charge against him under the section as amended in order to extort a divorce from him.

- (vi) The public opinion is not yet sufficiently roused to recognise the *immediate* necessity of deferring the consummation of marriage to a reasonable period in the interests of the health of the girl herself as well as the future progeny.
- (vii) The prevailing idea of a Shastraic injunction to have the consummation of marriage performed shortly after a girl attains puberty (which usually takes place according to Indian Medical Experts between 12 and 14) is also likely to make the proposed amendment, unpopular.

3. The crimes of seduction or rape are frequent in this part of the country. As I learn from my friend in the Police Department, the recent change has hardly had any effect of reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I don't think I can suggest any measure to make the law effective beyond one suggested in reply to question No. 15.

4. The recent amendment has hardly been in operation for a sufficiently long period to enable one to draw any definite conclusions on any of the three points suggested in this question. I am strongly in favour of extending the social Reform propaganda from the child welfare centres, whose number is increasing, to bring about the desired reform.

5. I have already said above that girls in India attain puberty between 12 and 14. The ages do vary with the associations in which the girls are brought up.

6. Generally cohabitation in our part of the country takes place soon after puberty. In some of the higher castes, the age of marriage itself has passed the stage of puberty. With this exception the age of consummation is generally simultaneous with the age of puberty. In some cases where there is a disparity of age between the husband and wife, cohabitation sometimes takes place before puberty even. Similarly cohabitation *does* take place before 13 where puberty also takes place before 13. But such cases never come to courts.

7. Yes, I have already said above that the evil practice is due to the Shastraic injunction against postponing consummation of marriage long after puberty.

8. To my knowledge, this ceremony takes place only among the higher castes.

9. I *do* think that the attainment of puberty is hardly an indication of physical maturity to justify a consummation of marriage. In my opinion the consummation should not take place before 16.

10. I think an Indian girl's age of consent should be fairly taken at 16.

11. Being not a medical man myself, I am unable to reply this question fully though I have come across several instances of girls having fallen prey to this vicious practice.

12. Yes, I *do* though I cannot describe the evil effects in sufficiently strong words as I am not a medical man.

13. There is hardly any improvement in public opinion in this respect since the year 1925. Whatever improvement has taken place in this respect, is due to the general spread of education as well as the social propaganda referred to above.

14. The prevailing idea amongst woman (except in the case of reformed families referred to above) has been that the consummation should take place soon after a girl attains puberty.

15. I have referred to the difficulties in this respect in my reply to question No. 2. I would suggest that vaccination registers should be main-

tained and preserved so as to show the exact *birth date* of a child vaccinated besides its full name.

16. No, the difficulty would on the contrary be increased in view of my reply in paragraph 2 (ii).

17. I have to suggest no amendment in this respect beyond the extension of the age of consent for extra-marital cases to 16.

18. I would suggest that in case the proposed change as suggested in the new section 376, is accepted, the trial court should be as at present, viz., the court of Session, Chief Presidency Magistrate or District Magistrate. My reasons for sticking to the present practice are the same that led the legislature in the year 1925, to adopt the same.

19. I am strongly against allowing the Police to deal with the cases of rape in the marital state. Under these circumstances, I would even tolerate the evils of improper prosecution or extortion as well as collusion to protect the offender which are sure to follow if the amendment suggested to deal with the cases in the marital state were to become law. A remedy would to some extent be afforded for the eradication of these evils, by having the trials in such cases only in the Court of Session with the help of a Jury.

20. Raising of the marriageable age of girls would certainly be an effective remedy for avoiding the evil in a marital state. But the Public opinion as a whole on the former question being yet extremely backward, a Bill to raise the marriageable age of girls to 14 would hardly be popular in the present state of things. Under these circumstances one ought to rely upon the extension of the propaganda of Social Reform and the penal legislation to carry out the desired reform. I have however already expressed my opinion that recourse to propaganda is necessary to raise Public opinion in favour of this essential reform. After the Public opinion is thus raised in favour of this reform, it would be easier to secure the Public opinion in favour of penal legislation also with respect to either of the two existing evils. In the mean time, we must be content with the spread of education and of the propaganda for the carrying out of these reforms. Penal legislation especially which is far in advance of the prevailing Public opinion can hardly prove a panacea for the carrying out of the Reforms however essential.

21. I have already expressed my opinion above as being favourable to secure the progress of social reform by education and social propaganda mainly and not by strengthening the penal law.

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Written Statement, dated the 13th August 1928, of Rai Bahadur Pandit RADHA RAMAN, M.A., Dewan and Vice-President, Council of Regency, Narsingarh State.

1. I have been living in the Narsingarh State, Central India, for the last three years, having been appointed its Dewan in September 1925, I am not aware of any dissatisfaction with the state of the law as it stands at present with regard to the age of consent.

2. I am of opinion that the law so far as it relates to the offence of rape by a husband and on his own wife does not require any change; but with regard to the offence of rape by a person other than the husband the age of the woman might with advantage be raised to 16 years instead of 14 years. As I will show in my answers to some of the other questions I am inclined to think that the raising of the age of the woman in case of an offence by the husband will not prove more effective as a safeguard, while in the case of the offence if committed by a stranger the raising of the age will be more consonant with public opinion and with the desire of social reform which is evincing itself in many quarters.

3. The crimes of seduction or rape are not frequent in my part of the country. I am not aware that the amendment of the law made in 1925 raising the age of consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state, probably it has not. It is more likely that it has had a certain measure of success in reducing the cases of improper seduction of girls for immoral purposes. It is with this view that I propose a further raising of the age of girls from 14 to 16 years relating to the offence when committed outside the marital state.

4. I am inclined to think that the amendment of the law raising the age of consent within the marital state to 13 years has not by itself been so effective in the three respects mentioned in this question as the general but gradual change in public opinion and the desire for social reform which are manifesting themselves among the more educated and the higher classes.

It is not easy to recommend any specific legislative measure calculated to make the amendment more effective. In fact none occurs to me. For the great difficulty in case of offences committed within the marital state is this, who is to prosecute, who is to give information to the Police or the Magistrate and who is to give evidence for the prosecution. Almost every person interested in the girl or related to the family would be most anxious to push up the matter and to protect the offender. The honour and modesty of a girl, as well as the honour of a family being involved the sympathy of the people would be on the side of the family and not against it for the enforcement of the law.

I would accordingly leave the matter to propaganda and social reform and education in order to attain the desired object.

5. So far as I know girls generally attain puberty at the age of 13 or say, between the ages of 12 and 13. In more rare cases they attain puberty between 13 and 14. The age probably differs in different castes and communities, girls of the lower and labouring classes are supposed to attain puberty somewhat earlier than those of the higher and more refined classes.

6. (1) So far as I know cohabitation is not common in any class in my part of the country before puberty.

(2) But it is common soon after puberty in almost all classes.

(3) It must be very rare before the girl completes 13 years. The whole thing depends on the customs prevailing in the class. As a general rule among all Hindus with the one exception of Rajputs, consummation does not take place at the time of the marriage, nor immediately after the marriage. The girl stops for a few days only at the house of her husband after the marriage and then is allowed to go back to her parents without the marriage having been consummated. Consummation takes place as a rule when she visits the house of her husband for the second time after the marriage. And this generally takes place within the same year or during the 3rd or 5th year after the marriage. If a girl has been married very young and happens to go to the house of her husband for the second time before she has attained puberty, or before completing 13 years of age it is possible that consummation might take place irrespective of age and puberty.

I am not aware that any such cases come to court.

7. I think the practice of consummation of marriage at the first appearance of puberty is due to some religious injunction but there is no injunction, so far as I know, for consummation before puberty. But the practice of consummation at puberty is observed in a few classes of the Brahmins of Southern India and not among the other classes. But I am inclined to think that it is now losing ground and is supposed to be more honoured in the breach than in the observance.

8. Gaona and Garbhadan are two different things. Gaona or Duragaman means the second visit of the bride to the house of her husband, while Garbhadan connotes consummation for the purpose of conception. Gaona is common in my part of the country, and is generally anterior to the consummation of marriage. It generally takes place after puberty but there is no rule or time limit as to how soon after puberty.

9. This is a question for a medical man to answer strictly speaking. I give my view after consulting the Narsingarh State Surgeon with whom I entirely agree. Puberty is not a sufficient indication of physical maturity to justify consummation of marriage. It only shows that the girl is capable of conceiving but it does not show that she is physically fit for consummation or motherhood. It is generally after three or four years after puberty that a girl's physical development should be regarded as sufficient for consummation without risk of injury to her own health and that of her children.

10. Sixteen years.

11. Some cases have come under my observation of girls who happened to become mothers at an early age, though after attainment of puberty, whose further development was thereby stunted and whose general health was permanently impaired. Their children too were by no means healthy and vigorous. I cannot give further details as to age and nature of injury.

12. I consider early consummation and early maternity responsible for high maternal and infantile mortality to a certain extent. There is a medical as well as an economic aspect of this question. Early maternity frequently results in multiplicity of children at an early age and if the parents are not in a position to earn sufficient money, and in early age they generally are not, the consequence is that the necessities of life are wanting, the standard of life falls very low and the rate of mortality is high. All this goes against the intellectual and physical progress of the people.

13. There has been a further development of public opinion in my part of the country in favour of raising the minimum age for the marriage of both girls and boys but this is apparently not due to the amendment of the law in 1925. It has no direct connection whatever with the question of the age of consent in extra-marital cases as stated in my answer to question 4, the development is confined to the educated and the higher classes only.

14. Uneducated women of a conservative temperament are anxious to become grandmothers and to have grandchildren on whom to lavish their affection. Such women generally favour early consummation of marriage of their children.

15—16. Not answered.

17. I would retain the law as it is in these respects.

18. The only additional difference in procedure which I would propose is that offences committed within the marital state should be tried in camera.

19. Not answered.

20. I am strongly of opinion that legislation fixing the minimum age of marriage would be more effective. I dare say that this course would be more in consonance with public opinion in my part of the country.

21. Please see my answer to question No. 2. Subject to the view therein expressed I would prefer to rely on the progress of social reform by means of education and social propaganda.

### Written Statement of Lady YESHWADABAI JOSHI, Amraoti Camp.

1. There is a great dissatisfaction regarding the state of law as to the age of consent contained in sections 375, 376, Indian Penal Code. Majority of women have no idea of the existing legislation, but feel the necessity of moving into the matter and raise the age of consent. There is unfortunately no open dissatisfaction exhibited by the women as there is no central body which can ventilate their grievances and their views on this matter. But the women-folk in particular who are the best judges of the effects of such legislation will thoroughly approve of the idea of raising the age of consent which will afford protection to married as well as to unmarried women.

2. The chief reason why an advance on the present law is necessary is that there is an appreciable degeneration in the new generation. The

children of young mothers are unhealthy and the young mothers suffer in health owing to early delivery. Also the young women in India requires special protection which the law alone can ensure.

3. I am unable to state anything on this question.

4. The best way of protecting the married girls is by putting off the marriage beyond 17, *i.e.*, after she attains her 18th year, and this alone will be an effective measure.

5. The girls in our part of the country attain puberty at the age of 14 to 15 and this holds good in all classes and communities.

6. The general custom is that cohabitation takes place after the girls attain puberty and is not dependant on the question whether the girl completes her 13th year or not.

7. There is no religious injunction for the practice stated in query 7 except that there is a custom grown according to which consummation of marriage takes place after puberty. The only penalty is that if the girl attains puberty before marriage then some gifts to the goddess at the marriage time are to be made.

8. The Garbhadan ceremony is performed here. It coincides with the consummation of marriage. It is performed within 16 days of attainment of puberty.

9. The proper age for marriage should be 18, and attainment of puberty is no indication to justify consummation of marriage.

10. The age required in question No. 10 is 25 and not less than that under any circumstances.

11. One often comes across young girls of 14 with a child, pale and morose and the health of the mother completely shattered. Statistics should be prepared by competent medical authorities which will at once show the enormity of the grave problem of maternal and infantile mortality.

12. "Yes." The answer is given above.

13. There is no further development of public opinion on this point since the amendment of 1925 which is not fully noticed and the consequences of which on the question of consent is not even appreciated by a majority of practising lawyers and the intelligentsia.

14. No. The willingness they show for marriage is due to the fact that birth of a son is essential for religious matters.

15. I am not in a position to answer this question.

16. Same as above.

17. There should be heavier punishment for extra-marital offences than for marital ones.

18. I am not in a position to answer this query.

19. Same as above.

20. The effective way is to fix a minimum age of marriage rather than fixing a higher age of consent. The public will approve a minimum age of marriage to be fixed rather than the raising of the age of consent.

21. It is absolutely essential to legislate on this matter. The so-called public opinion on this matter will take years before it will have any effect and the social evil at present existing should be eradicated at once through legislation. The changes sought to be introduced by the new amendment will encounter very little opposition from the public.

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Written Statement, dated the 29th August 1928, of Mr. K. G. TAMHAN, Nagpur.

2. For the last ten years public opinion with regard to marriage of girls has undergone remarkable change. Girls are now hardly married before the age of 13, which is the age of consent under the existing law. What

the law seeks to do is thus accomplished by the gradual advance of social views. Thus there seems no necessity to change the present law of the age of consent.

4. Poverty, education, the system of Hindu (exorbitant Dowry) and various other causes have contributed to the postponement of marriage of girls even after the period of puberty. This change is not in my opinion due to the amendment in the law of age of consent.

5. The age of girls at which they attain puberty in this part of the country varies from 13 to 15 years, among well-to-do classes. 12 is the age of puberty on very rare cases. Sickly and ill-fed girls attain puberty late.

6. I am not aware of cohabitation before puberty.

(2) Cohabitation after puberty is common because it is enjoined by the Hindu Shastras. I have not heard of any such case coming to court.

7. Religious injunction forbids consummation before puberty. The offender incurs the sin of Brahmahatya (Killing a Brahman). Consummation at puberty is sanctioned by the writers of Smriti, such as Manu, Yadvyavalkya, Parasara. They prescribe heavy penalty for breach of this injunction.

8. Yes. Garbhadhan is performed after the attainment of puberty and never anterior to it. It is performed within sixteen days from the first appearance of menses.

9. Yes. The commentator Vidryaneshwar, on Yadvya Valkya Smriti explains the word Ritu as the time indicating the fit condition of conception.

12. Consummation after puberty is not in my opinion responsible for maternal or infantile mortality, nor is the physical or intellectual deterioration due to this. Intemperance, overindulgence, etc., are on the other hand at the root.

14. Women do not generally like long postponement of consummation after puberty.

17. Marital and extra-marital offences should be classed separately. The latter should be treated as a more heinous offence than the former. Punishment for marital offence should not go beyond fine.

21. Of the two alternatives, I would prefer the latter. Inspiration from within is always more powerful than fear of law.

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**Written Statement, dated the 23rd August 1928, of the District Council, Balaghat.**

With reference to your letter No. 42-A. C. C., dated 26th July 1928, I have the honour to inform you that the matter was placed before the meeting of this Council held on 19th August 1928 and it was resolved by majority that the age of consent need not be raised and should be kept at 13 and 14 as at present. A copy of the resolution is herewith attached for information.

*Resolution.*—Resolved by majority that the age of consent need not be raised and should be kept at 13 and 14 as it is at present. Messrs. Faizul Hasan, Kanhaiya Lal and Ardeskar Mehta and Chairman being of opinion that it should be raised to 14 and 16.

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**Written Statement, dated the 11th August 1928, of Mr. R. J. AMARDEKAR, B.A., LL.B., Officiating District and Sessions Judge, Hoshangabad.**

1. The age at which the menstrual function becomes established varies greatly with the individual and climate. The following table of ages of

first menstruation in years is given from Lyon's Medical Jurisprudence, 7th edition, page 267.

Race.	10 to 12 years.	12 to 13 years.	13 to 14 years	14 to 15 years	15 to 16 years.	16 to 19 years.
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Europeans . . .	8.8	13.4	23.4	21.2	16.7	16.0
Indians . . .	12.4	36.4	29.3	13.9	4.5	2.8

It is said that the earlier menstruation in hot climates seems partly due to the shorter duration of life, with its consequent earlier maturity, and partly to social differences, whereby in the tropics, children early gain precocious knowledge of sexual matters.

2. It is true that menstruation is not a sign of bodily maturity. But commencement of fertility is, as a rule, indicated by the commencement of menstruation. The Indian knows that a girl in this country may become a mother while she is still a baby in intellect and self-control, knows that while still a child her passions wake, knows that he can not keep her ignorant and knows that he cannot at that age trust to her principles. The climatic and physiological conditions are to a certain extent responsible for the general rule in this country for the parents to choose at their discretion, not hers, for she is incompetent to choose, and to celebrate the marriage shortly before the age at which passions wake. That was how indiscretion on the part of girls was prevented. It need scarcely be said that indiscretion in such matters might often mean calamity and ruin. The institution, of course, has its inherent defects, but it is very improbable that early marriage should have been in vogue if society in ancient India did not find itself more or less compelled to adopt the institution. The stability of society probably depended upon it.

3. It is certainly desirable to make an advance on the present law, to extend the age of consent in marital and extra-marital cases and to fix a minimum age for marriage. Society in India is changing and this is a transitional period. But it is chiefly in a very small section that rapid changes have been taking place. It is impossible to ignore the climatic and physiological factors and the existing social conditions. The matter deeply affects more than 300 millions of people who have certain rooted notions. The law may be amended but such notions do not easily change in any country. It would be long before people began to appreciate, if the law were amended, why the amendment was considered desirable and how it was beneficial and likely to effect general improvement.

4. A child wife of 13 will talk of her experiences to girls younger than herself and a boy husband of 17 or 18 will talk about those matters to boys younger than himself. How then is a mother's care to foster ignorance? What is necessary is to create an invisible but an unbreakable wall of stringent etiquettes. While nothing can be done as regards climatic or physiological factors, change in social conditions may be brought about. It is inevitable, however, that the process will be very slow.

5. In so far as the existing machinery (of the Police and Criminal Courts) can be of use, the utmost that could be done was, I think, done by the amendment of the year 1925. That machinery will be quite unsuitable to cases which are contemplated with reference to the extension of the age of consent and the fixing of the minimum age of marriage. The penal law should be strengthened regarding such cases. But the offences should be punishable with fine not exceeding Rs. 500. The Municipal and Local Self-Government Acts should be amended. Power should be given to Municipalities, District Councils, Local Boards and similar bodies (including Village



Panchayats) to enable them to direct the different castes and communities to elect panchayats for dealing with such matters. The panchayats should be empowered to impose fines. Exceptions might be made as regards some castes or communities for some time. While such measures will strengthen the criminal law without making it unnecessarily drastic, they will have an educative effect on a very large number of persons and will be operative as systematic propaganda. It will be very unreasonable to expect immediate results. Indeed it is almost impossible to effect social changes within a short period.

6. As regards cases of rape which come up before courts I have only to say that they are often of helpless girls below 12 or 13. It is improbable that statistical information for the short period of 2 years after the amendment of the year 1925 will serve any useful purpose. Real and healthy changes will come only slowly.

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**Written Statement, dated the 18th August 1928, of Mr. M. B. REGE, B.A., LL.B., Member of the Bar Association, Khandwa.**

As desired by you, I submit herewith an opinion on the age of consent. The matter however involves technical questions which can be answered only by a medical man or by one who has given a very close attention to the problem. I have given a general opinion from the layman's point of view, in reference to the present conditions of Indian Society. My casual enquiries show that, so far as marital relations are concerned, it is only a negligible minority in non-Hindus that marry females before the age of 14.

2. Cases of rape as defined in section 375, Indian Penal Code, are, in this province confined to the lower strata of society, where the average standard of intelligence is low and the opinion of the intelligentsia certainly is that the present law regarding the age at which the woman could give consent to the carnal act, is not satisfactory; and that the age of consent in cases of intercourse outside the marital state must be raised. Girls in this part of the country attain puberty between the ages of 14 and 16, and it is only in exceptional cases of precocity or infirmity that there is a variation.

3. In general, except in the advanced and educated classes, marriages take place before puberty and therefore it will suffice if the age of consent in the marital state is made coincident with the attainment of puberty. As a limit, if an age limit is thought proper in such cases, I should be in favour of 14 as the age. In cases outside the marital state however, it is necessary to see if the consenting party has a clear idea of the nature of the act and its consequences and this in any case is not possible before the age of 16. I would even go further and say that the minimum age in such cases for consent to take the act out of the pale of crime, should be fixed at 18, which is generally considered to be an age at which a person has sufficient maturity of understanding. In India where such an act renders the woman liable to heavy social penalties, and makes her an outcast socially, it is desirable that the law should be equally stringent.

4. *Re III.* My experience in the legal profession shows that the crime is not more frequent here under normal conditions than in other parts of the country; and it is more or less confined to the lower strata of society. It is too premature to decide whether the amendment of 1925 has had any effect on preventing such crimes.

5. *Re IV.* It is too premature to see the effect. Society is steadily progressing with the times, and public opinion is a great factor towards such protection irrespective of legislation.

6. *Re V.* *Vide* my remarks in paragraph (2) above, my enquiries show that the age does not vary appreciably in different castes or communities.

7. *Re VI.* (1) Very rare and confined to the lower strata and to women leading an immoral life.

(2) Generally in all except the educated classes.

(3) This depends on the age at which the girl attains puberty; and to factors in (1) above.

There is hardly any case in the marital state that comes to Court. This is perhaps because in the present conditions of Indian Society, the families of the husband and wife are so closely tied by the proverbial eastern sentiment that both parties try to keep such matters away from the public. The woman again has, even in the so-called educated class, a comparatively subordinate position, and as her interests even to the extent of her daily maintenance are inextricably woven with those of her husband, there is hardly any cases of self-assertion at an early age.

8. *Re VII.* It is mostly time honoured custom. It is perhaps in the most orthodox families that it has a colour of religion. I have not been able to lay my finger on any Shastric authority; but there is a belief that the husband should, within sixteen days of the attainment of puberty by his wife, give her his bed.

9. *Re VIII.* Yes. The ceremony is generally performed. It coincides with consummation, and is generally performed soon after the first menses.

10. *Re IX.* This is more or less a question for a medical man. My opinion as a layman is that the attainment of puberty is only one indication of advance towards maturity; and that physical development would vary with circumstances. I would have an interval of at least a year between the attainment of puberty and consummation.

11. *Re X.* *Vide* my remarks in paragraph (2).

12. *Re XI.* No.

13. *Re XII.* It is only one of the reasons. If we look to the facts of the last four generations, and even more, we are forced to the conclusion that it is not early marriage or consummation alone that is responsible for the present alarming rate of maternal and infantile mortality. I would ascribe it more to the present economic conditions which have sapped the vitality of Indians. The average Indian has not enough for his bare needs, and in his present surroundings, he can ill afford to give his dependants even the bare necessities of life. Hence there is the physical and mental degeneration. We have however to adapt ourselves to the conditions and eliminate all factors as far as possible; and in this view, early marriage and consummation may be regarded (the present economic conditions being unavoidable) as in part responsible for the infant and maternal mortality; and measures may be taken to avoid these.

14. *Re XIII.* There is a steady progress, and therefore the effect of the amendment cannot be clearly ascertained. *Vide* paragraph 5 above.

15. *Re XIV.* Except in families having advanced social views, women do favour early consummation, owing to the time-old traditions, and ignorance of the effects on the physical health of the girl in the present economic conditions.

16. *Re XV.* The raising of the age limit would be the layman's solution. In the present state of the law various difficulties are experienced in arriving at the finding as to the age of the girl. The only safe test is an examination under the X-ray for ascertaining the stages of ossification; and this unfortunately is available only at few places in India. The raising of the age limit would minimise the difficulty, even though it would not completely solve it.

17. *Re XVI.* Not appreciably; but cases of girls under 14 would come in only, as between the husband and wife; and such cases are extremely rare. If the age in non-marital cases be raised to 16 or to 18, as suggested above, there would be less margin for an error in the estimate of age.

18. *Re XVII and XVIII.* Yes; for in the one case, there would *primâ facie* be brutality, and in the latter we would generally not have it. The first would be brutal crimes, the latter, marital indiscretions. The punishment for the former must necessarily be more than for the latter. They should in my opinion be Sessions cases, punishable with a maximum of transportation for life or rigorous imprisonment for a period up to 14 years, with a minimum of two or three years.

Within the marital state the offence should be made non-cognizable and a complaint should in such cases be made either by the wife or by some guardian of the wife (under law if the husband and his relations be excluded). My reasons for this are that in the present condition of Indian Society in general, the girl wife, who is dependent on her husband even for her maintenance, would be doubly punished by the prosecution of her husband being in the hands of persons who may have no interest in her welfare. A prosecution of this kind would have the natural result of disrupting the family, and therefore it should be in the hands of persons who could judge best of the welfare of the girl in the first instance. I would also be of opinion that the long incarceration of the husband would be in the nature of punishment for the wife and therefore the punishment in such cases should be fixed at a maximum of six months simple or rigorous imprisonment with an option of fine. The offence should also be compoundable with the permission of the Court. It should be triable by a 1st class Magistrate only.

19. *Re XIX.* No, I consider the present safe-guards quite adequate.

20. *Re XX.* I think society would revolt against legislation fixing the minimum age of marriage. Penal legislation of the nature of the proposed amendments would be adequate for the needs, and it is sure to be more effective. As I have said above, society is steadily progressing and with the school master abroad, the object of fixing a minimum marriageable age will be achieved in time.

21. *Re XXI.* It will be as I have said above, Education, and social propaganda that will smoothly take society towards the goal. Penal legislation, in present conditions will only be an incentive to social reform in these matters. We have to lead society slowly but steadily towards progress, by bringing to them a realisation of the dangers of the present system at the present age.

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**Written Statement, dated the 19th September 1928, of Mr. R. M. WATHODKAR, B.A., B.L., Additional District and Sessions Judge, Akola.**

1. I think that the present law regarding the Age of Consent is not satisfactory and it ought to be raised.

2. The circumstances which in my opinion justify an advance in the present law are as below:—

- (a) Owing to social reform and advance in education the girls remain unmarried upto an age of 20 years and they move freely in the town as they have to attend Schools and Colleges. There is likelihood of evil minded young men to take liberty with such girls under several pretexts as they get an easy access to them.
- (b) Several young girls in big cities are employed in Factories and Mills and are open to temptations.
- (c) They also attend Cinemas and Dramas frequently which in a way create laxity in morals in the inexperienced young generation.
- (d) The loosening of parda system and old restrictions upon the behaviour of young girls also have made a change in their situation.
- (e) The increase in motor traffic is also one of the circumstances.

3. In my opinion the crimes of seduction and rape are not frequent in this part of the country, but there appears to be a slow increase. I cannot state for certain whether the amendment effected in 1925 has succeeded in preventing or reducing cases of rape outside the marital state as I have not got statistics on this subject.

4. The amendment of 1925 being in force for a short period, it cannot be said that it was effective in protecting married girls against cohabitation with husbands within the prescribed limit. The most effective step will be to prohibit child-marriages.

5. The girls in this part of the country attain puberty between 13 and 14 years. It is not restricted to any particular caste or society. It however depends upon environments of the girls.

6. Cohabitation before puberty is not common, but it takes place soon after puberty. In rare cases it takes place even before the girl completes 13 years when she attains puberty. Such cases rarely come to Court.

7. I do not think that the early consummation of marriage is due to religious injunction.

8. The Garbhadan ceremony is generally performed in this part of the country soon after puberty, i.e., within a fortnight or a month except for unavoidable circumstances.

9. I do not think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In my opinion the physical development to justify consummation of marriage takes place at the age of 18 to 20 years.

10. It is very difficult to answer this question. It will depend upon the mental and physical condition of each girl. However at the age of 16 years a girl in India will be competent to give her intelligent consent to cohabitation with due realization of consequences.

11. I have not come across with any case of cohabitation before puberty; but I have come across with a few cases of cohabitation after puberty but before physical development which made the after life of the girls miserable, they being always sickly. They were girls of 14 and 15 years. The injury sustained was not a particular one, but general ill-health.

12. I do not think that early consummation and early maternity is solely responsible for high infantile mortality.

13. I think that the public opinion will support the increase of the Age of Consent in extra-marital cases from 16 to 18 years, but they will have objection in marital cases except in highly educated society.

14. I think that women in this part of country do not favour early consummation of marriage for their children except in orthodox society when the girls attain puberty. Owing to spread of education they are also changing their opinion.

15. In my opinion there is not much difficulty in determining the age of girls in connection with offences under Sections 375 and 376 of Indian Penal Code as vital statistics registers, vaccination registers and school registers render great help in this respect. In some cases horoscopes also come to help.

16. I do not think that the difficulty of error in determining the age will be materially reduced if the Age of Consent is raised to 14 years or above as cases have occurred when medical evidence differs in absence of documentary evidence referred to in the answer to question No. 15.

17. I think that marital offences should be separated from the extra-marital offences. The punishment in the former class of offences should be lighter than in the latter. It may be reduced to imprisonment of either description for one year, or fine, or both, in the former class of cases, while in the latter class of cases there is no harm in maintaining the present punishment.

18. I do not think that there is any necessity of change in the procedure to be adopted in the trials of marital and extra-marital offences.

19. I do not think that there is any necessity of providing safeguards beyond those which exist now. The gradual advancement in society will serve this purpose.

20. I do not think that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. I think that the fixing of minimum age of marriage would be more effective and the public in this part of the country will prefer it than raising the Age of Consent in marital cases. If there is an appreciable difference between the two ages, there is probability of marital offences which may not come before the Court.

21. I think that the progress of social reform by means of education and social propaganda will partly secure the object in view, but there should be no relaxation to strengthen the penal law. The penal law generally puts a check and prevents offences.

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### Written Statement of Rao Bahadur K. J. DESHMUKH, Khamgaon, Berar.

1. Yes. It is generally thought that the Age of Consent as fixed in Sections 375 and 376 of the Indian Penal Code is low.

2. (a) The present age should under no circumstances be retained. It is rather too long.

(b) An advance is detailed below in answer to all the following questions should be made in the Age of Consent.

3. Crimes of seduction and rape are not generally frequent, except in the case of brothels. The raising of age in 1925 has not succeeded in preventing such cases. Statistics will show that practically no cases have been challaned by Police, who do not consider it a part of their duties so far as this Province is concerned.

4. No. Not in any way.

(1) Penalising early marriages is the only effective remedy. But this step is likely to be very unpopular. Excepting for special reasons, i.e., extra strong constitution of the girl or other family matters of a special nature consummation below 14 years of age be made penal. If the right to certify these special reasons is given to Government Officers, public opinion is likely to feel offended. It should therefore be given to Village Panchayats wherever existing or in their absence to some respectable members of the community concerned.

(2) Stimulating public opinion will be of no use at all.

5. Generally between 12 and 13 years among labouring classes and between 13 and 14 years among others.

6. Not before puberty. It is generally immediately after puberty in all cases. Such cases never come to Court.

7. Yes. It is due to popular belief in religious injunctions.

8. Yes. It is among Hindus. It coincides with consummation. It is performed immediately after the attainment of puberty.

9. No. At least two years after puberty or at the age of 15 whichever is earlier.

10. 16 years is the age when a girl can give an intelligent consent.

11. Cohabitation before or after puberty has resulted in deaths of girls carrying on prostitution and in other cases it has prejudicially affected the health both of the mother and the child. In the former case the age of the girl did not exceed 12 years. In the latter case it may be 14 years.

In these last-mentioned cases general deterioration and premature death both of the mother and the child was the result.

12. Yes. Early maternity is one of the chief and important causes of high maternal and child mortality and it is responsible for the physical deterioration of the people.

13. No. As the public is practically indifferent.

14. Yes, for various reasons.

15. In some cases difficulties are met with. Properly maintaining the vital Statistics Register, and better still, the proper maintenance of the Vaccination Register will obviate this difficulty. Vital Statistics Rules must penalise failure to report births to the village officials. Issuing of Vaccination certificates to parents is also another remedy.

16. Raising of age will have no effect in reducing or minimising the errors or difficulties.

17. Yes. Transportation for life or rigorous imprisonment for 7 years and fine or both for non-marital offences.

18. Extra-marital offences:—Cognisable, warrant, non-bailable, non-compoundable, triable by 1st class Magistrates.

Marital:—Non-cognizable summons, bailable, compoundable—1st class Magistrate.

Punishment:—If girl below 12 years, simple imprisonment for six months, or fine of Rs. 1,000 or both. If girl above 12, only fine upto Rs. 1,000.

19. None. Present provisions being adequate, no extra provisions are needed.

20. Maximum Age of Consent will be more in consonance with public opinion.

21. More on the Penal Law.

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**Written Statement, dated the 16th August 1928, of Mrs. J. F. McFAYDEN, Secretary, Ladies' Club, Nagpur, Central Provinces.**

6. (1) No.

(2) I understand most young wives joined their husbands soon after puberty.

(3) See 2.

7. Yes.

9. Certainly not. I would defer it until she is 16 years.

10. Possibly 15 years.

11. Yes. Details not available at present.

12. Decidedly.

13. Amongst the higher classes. Yes.

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**Written Statement, dated the 21st August 1928, of Rao Sahib RAMA-KRISHNA RAO SHRIKHANDEY, M.A., LL.B., Public Prosecutor, Saugor.**

1. There is not much dissatisfaction with the state of law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code in the General Public. There is a volume of growing dissatisfaction amongst educated and advanced classes alone which is quite discernible at present.

2. The present law was good, so far as it went as it was an advance and a step forward.

- (a) The growth of public opinion,
- (b) Education amongst the female classes, and
- (c) the general awakening which has taken place all round, which has made us realise our physical deterioration, are some of the important circumstances which necessitate our making an advance on the present law.

3. The crimes of seduction or rape are not rampant though it cannot be denied that crimes of that nature do take place. I am of opinion that raising of Age of Consent to 14 years has made no change in the commission of these offences, as the change was not a definite and marked change. I would propose that the law to be effective should prescribe 15 as the minimum Age of Consent. I am not for retaining a distinction for marital state.

4. I don't think that the amendment of 1925 in raising the Age of Consent to 13 years is in any way responsible in protecting married girls against cohabitation with husband within the prescribed age limit. If this is due to one fact more than another it is due to this that generally marriages in this part of the country, do take place between the ages of 11 and 13 amongst all classes, but amongst Maharashtra Brahmins the age limit is much advanced and it may be ordinarily taken as a rule that marriages below 13 now are rare. So it may be taken as a sure criterion that generally cohabitation before 13 is exceptional. The Maharashtra Brahmins may be said to be pioneers in the direction of stimulating public opinion in putting of marriages beyond 13. The other classes are not so forward yet. The raising of age limit for marriage will automatically put a stop to this evil.

5. The average age at which girls attain puberty in this part of the country may be taken to be 14. There is not much difference in this respect in different classes though in several instances it may be delayed owing to bad and poor physique.

6. Generally speaking cohabitation is not common before puberty, but it is common soon after puberty. Instances of cohabitation before 13 are rare. To my knowledge these cases have not come. It is only in cases of rape, that this is observable when girls of 8 to 10 have fallen victims.

7. Religious injunction was formerly considered to be sort of a sanction for cohabitation, but I think this is not so now. But in different castes, Gona is considered to be a period, after which cohabitation becomes more or less common. I do not think that any penalty attaches to a breach of any injunction. My enquiries reveal that a sort of custom has grown up which sanctions such cohabitation.

8. Generally speaking Gona takes place a year or 3 years after the marriage. But this rule varies according to the age of the girls in different castes.

9. I don't think that attainment of puberty is a sufficient indication of physical maturity to justifying consummation of marriage. I am of opinion 15 should be the minimum age, when physical development, coupled with mental development, will insure the free giving of intelligent consent for cohabitation. This will also prevent injury to health and progeny. This minimum will not in any sense be a violent departure, and our growing National consciousness will enable us to see that we by this act safely confer immense benefit on our posterity.

10. I think this is sufficiently answered in the previous reply and I would fix 15 as the minimum limit.

11. Generally I think that premature cohabitation does result in evils suggested in this question, but I refrain from giving particulars.

12. Yes, I think early consummation and early maturity are responsible for high maternal and infantile mortality and this state of things does vitally effect intellectual and physical progress of the people.

13. This has been answered in replies to previous questions and I am of opinion that there is a development of public opinion amongst Maharashtra Brahmins only.

14. No. Generally this is not true, though cases are not unknown in professional classes of women who bring up their girls for professional purposes.

15. So far as I am aware no cases cropped up in which the difficulty referred to arose. If birth registers are maintained correctly I think this difficulty can be minimised.

16. If the Age of Consent is raised to 14, then there might arise cases in which difficulty of determining the real age might arise as the Medical Authorities cannot distinguish between the ages of 13 and 14 by any distinct marks.

17. No. The distinction can be made only in the punishment. The same distinction as is present may be maintained in respect of punishment.

18. Ordinary procedure of trial will do, in extra-marital state, for offences against marital state, the trial may be held by the District Magistrate or first class Magistrate of not less than 10 years standing.

19. The present safeguards are enough. It is only in regard to offences against marital state, that I would suggest a special sanction of District Magistrate as a preliminary for starting prosecution.

20. I think both remedies should be resorted to, if we are really serious about the matter. Public opinion will get itself reconciled when once due publicity is given and it is known that penal legislation stands to punish acts, which are treated by the state as offences.

21. I am for legislation pure and simple. Education and propaganda has not as yet effected a desired change.

**Written Statement, dated the 12th August 1928, of Rai Bahadur K. S. NAYUDU, B.A., LL.B., Public Prosecutor, Wardha.**

5. Girls usually attain puberty at the age of 14 in this part of the country. There are extremely rare cases in which they attain puberty at 12. About 10 per cent. of the girls attain puberty at the age of 13. Cases of early attainment of puberty occur mostly in well-to-do members of the society.

6. Cohabitation before puberty is practically non-existent. Cohabitation soon after puberty is the general rule. In fact in most cases it is so soon after puberty that it is positively injurious to the health of the girls and their progeny.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. Two years after puberty, i.e., about the age of 16 a girl's physical development may be considered to be enough to justify such consummation without injury to her health or that of her progeny.

10. Never under 16.

11. Cases of cohabitation before full physical development are the rule. One will have to look for exceptions to find out cases in which cohabitation has taken place after full physical development.

12. Yes.

13. Yes. Such development of opinion is confined to the more intelligent sections of the population.

14. Yes, due to ignorance.



15. No.

17. Yes. For extra-marital offences the present punishment would be suitable. For marital offences generally I would provide imprisonment for 2 years. or fine in the alternative. This would minimise opposition by orthodox sections and would result in bringing to light more marital offences.

18. No. Publicity to marital offences will have the effect of educating public opinion among the orthodox section of the community and will serve as a greater deterrent.

19. Treating the marital offences as minor offences would minimise the evil contemplated by this question.

20. Fixing the minimum age of marriage will be more effective and of course fixing both will be the most effective. Advanced public opinion has been sufficiently prepared to support such legislation against the orthodox sections. Opinion among the orthodox sections must now be created by legislation. It is unwise to wait for a change in orthodox mentality.

21. I am strongly in favour of strengthening the penal law immediately. The social reformers have already done sufficient work in the way of creating public opinion by education and propaganda and although I favour the continuance of social reform work to support the proposed penal law, I would not leave the evil to be remedied by social reform work alone.

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### Written Statement of Mrs. E. G. DICK, Vice-President, Ladies' Club, Nagpur.

The following Resolution was passed at the first meeting of the Women's Conference on Educational Reform, Nagpur, C. P. (South):—

"That, in view of the disastrous effects of early marriage on health and education, the marriage age of girls should be raised by legislation to 16 years. The Conference also heartily supports Sir Hari Singh Gaur's Bill and welcomes Haribilas Sharda's bill for the 'prevention of child marriage.'"

[The information given below has been supplied by (Miss) Dr. N. R. Mucadam, W.M.S., Medical Officer in Charge, Doga Memorial Hospital (Dufferin Fund), Nagpur, C. P.]

1. I disagree with the *exception* to the law. It may not be illegal as the law stands, but it does the same harm from a medical point of view.

2. (2) Raise the Age of Consent.

3. I have one suggestion to make about the improper seduction of girls for immoral purposes. Some girls take the step, knowing the danger. A number are seduced by a class of women who make a business of procuring girls for immoral purposes. The police should be compelled to look out better for this type of women.

4. The marriage age should be raised.

5. Hindu and Mohammedan girls attain puberty between 12 and 14 years. Parsee and Anglo-Indian between 13 and 16 years. Children who, owing to poverty, are brought up in one apartment, along with parents, attain puberty at an early age.

6. (1) In all probability there may be cases.

(2) Yes, generally soon after puberty.

(3) Yes, if she is married.

7. I personally don't attribute it to religious injunction, but, the illiterate masses of people owing to want of education, make it a custom. This should be referred to Hindu religious authorities.

8. A regular investigation should be made among different castes and classes of society. I believe some classes perform this custom at a certain

age, whether puberty has been attained or not, while others perform it soon after puberty.

9. No, certainly not. Twenty years is the ideal age when a girl would be fit to become a mother, but meantime I should say 18 years.

10. This depends on the upbringing of the children. Among the poorer classes a little child knows much more than a grown up girl of the educated classes. A regular study should be made of the workings of children's minds in different classes of society.

11. If girls become pregnant before their bodies are fully developed, the following are the results:—

(1) Difficult labours.

(2) Increase in the mortality of mothers and children.

(3) The babies born of such mothers are weak, difficult to rear, and generally remain delicate throughout life, and the minds of some are much below par in intelligence.

12. A part of the total of maternal and infantile mortality is due to the above causes.

13. Yes, even among illiterate classes, the women who have suffered themselves, wish it to be otherwise, but because of custom they allow their daughters to endure the same kind of suffering.

14. Only among the illiterate classes.

15. Occasionally difficulties are likely to arise and it is for medical experts to decide.

16. Yes.

(1) Birth registration should be insisted upon.

(2) A certificate should be issued to parents.

20. Legislation for fixing the minimum age of marriage to 16 years.

21. All three are necessary to raise public opinion.

**Written Statement, dated the 13th September 1928, of Rao Sahib Pandit V. B. KEKRE, B.A., LL.B., President Municipal Committee, Mandla.**

1. Yes.

2. (1) (2) I am against retaining the law as it exists at present. Age for marital offences should be 13 and extra-marital 16 years or even 18 years.

3. Crimes of seduction frequent. The amendment seems to have reduced cases of rape, but not of improper seduction of girls.

4. (1) No.

(2) Yes.

(3) The marriages are being put off beyond 13, but not owing to changes in the law.

5. 12 to 16. It differs in different castes and communities.

6. (1) Can't say, but very likely not.

(2) Very common.

(3) Rare cases.

(4) No.

7. No.

8. Gaona is usual, but Garbhadan disappearing. Performed after the age of puberty.

9. No. After 16

10. After 16 or even 18.
11. Several cases have come to my notice. General deterioration of the girl's health and at the same time of her progeny are observed.
12. Yes.
13. Yes. It is confined to educated classes.
14. No.
- 15—18. Medical experts would be able to give definite and better suggestions.
- 17—18. Yes, as suggested by Sir Hari Singh Gour.
19. I can't suggest.
20. Yes. Fixing a higher Age of Consent for marital would be in consonance with public opinion, but I don't like change in marital cases.
21. I would rely on social reform.

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**Translation of the Written Statement of Mr. JASWANT RAO  
NAGI, Honorary Magistrate, Chataree Taluka, Pusad Court,  
Umarkhed.**

This article lays down the limit of the Age of Consent at 13 or 14 years in case a girl is mature before 13 and if her husband cohabits with her in such condition that amounts to a crime according to the rules laid down, which is unsatisfactory.

But there is an objection to age limit of 14 years intended for others. Not only that, but if this limit is raised above 14 it will be more welcome inasmuch as it will check immorality.

2. The present rule is right in accordance with the reply given to question 1, above. It is not necessary to introduce reforms in accordance with the introduction of the rules, because the husband is liable to be punished under Indian Penal Code, in case he cohabits with his wife before her attaining to puberty. On account of this the relations of husband and wife will be strained and enmity may result between the parents of the bride and the bridegroom.

Under Section 375 of Indian Penal Code consent obtained by force when the girl who is under 13 years of age; but has intense sexual passion and succeeds in prevailing upon her husband for cohabitation then it seems reasonable that consent cannot be called as having been obtained by force though the girl is underage. No one will admit that the sexual intercourse by a husband due to his wife's intense sexual desire, and that too after having been persuaded by her, comes under the provision of "Consent by force". Many cases will consequently be instituted in the Courts without any foundation. It therefore follows that there should not be an age limit in the case of husbands who satisfy their wives' sexual desire, but the limit of maturity and puberty only.

3. In reply to the question, it may be stated that there might be such crimes, but they do not come to light. To prevent such crimes punishment should be enhanced and for the welfare of the society any man should be allowed to file a suit of rape against a man regardless of his being a husband or not. It cannot be said that the crimes of seduction or rape have decreased or ceased altogether on account of the amendment of 1925 in the Act raising the marital age to 14 years, because it is not every one who knows the age limit laid down in the Act and it is not due to the amendment of the Act if the crimes have increased. There is no use in simply amending the Act as long as the public is ignorant of the dreadful effects that follow on account of early cohabitation, i.e., bodily and mental loss.

4. It is to be stated that no effective purpose has been served in amending the legislature as in 1, 2, and 3, and the reason for this is that the masses are ignorant of these amendments.

5. The usual age at which the girls attain puberty is 12 years. This is common to all classes of society, and depends chiefly on nutritious food and sanitary living.

6. Cohabitation is not resorted to, before the girl attains to puberty. There is a usage that cohabitation is common soon after puberty.

7. Such cases do not come to the Court. The practice of cohabitation just after the girl attains to puberty is according to religious injunctions.

8. "Garbbadan" ceremony is invariably performed before the consummation of marriage. This is performed within 5 to 8 days, after attaining puberty or even 2 or 3 months later.

9. Reply to the question is easy. In many cases it has been observed that no injurious effects have been produced on the health of the mother and her progeny, when the marriage was consummated, just after attaining puberty. On the other hand, these are cases in which injurious effects have been produced on the health of the mother and on her progeny where the consummation of marriage took place after a considerable lapse of time after attaining to puberty.

10. A girl in a well-to-do family, having keen religious sense that cohabitation on attaining puberty according to religious injunctions is desirable, is competent to give an intelligent consent for cohabitation.

11. It is difficult to answer this question, because there might be some girls who may have either sustained injury to their health and their progeny, and therefore may be prejudicially disposed to the cohabitation after puberty, but before full physical development of the girl or on account of excessive indulgence in sexual intercourse.

12. No, it cannot be stated so.

13. No, it cannot be said that people have formed their opinion regarding the marital state and early consummation of marriage just after the amendment of 1925, raising the Age of Consent, because not even one per thousand knows the reform that has taken place during the year.

14. It is a general opinion of the villagers that the marriages of their children should take place early, but cohabitation should occur only after attaining puberty.

15. In the registers of births and deaths there is a column provided for noting the birth of a child. In the same register an additional column should be provided to note the name of the child after "Namshankar Vidhi" has been performed. This will facilitate the determination of the exact dates of births and deaths and will afford a strong evidence.

16. If the Age of Consent is raised to 14 or more in all other cases except that of a husband much difficulty experienced in question No. 15 above will diminish or disappear.

17. No. Because the same punishment may be inflicted if the same age limit is observed as for both, i.e., in the case of marital state up to the age of puberty and in other cases the age limit, should be the same as prescribed in 1925 amendment Act; and consequently both crimes should be brought under same category.

18. Two different kinds of procedure in the case of trials for both kinds of offence should be observed. The offence should be non-cognizable in the case of marital state and should be cognizable in other cases.

19. To provide a better safeguard is to appoint officers who are God-fearing and who will be very careful in investigating offences.

20. The public will not mind any measure introduced under legislature howsoever effective it may be unless a period for age limit is prescribed for puberty instead of fixing the Age of Consent for marital cases.

21. The public are ready to rely upon securing the object in view by adhering to the progress of social reform through education and social propaganda among the masses. They do not prefer to rely on the strengthening of the penal law.

**Written Statement, dated the 13th August 1928, of Mr. S. K. Barlinge, Pleader, Nagpur.**

1. Yes, there is dissatisfaction and perhaps intense, but there is difference in the view points. For instance while some are of opinion that the age limit should be raised others think that there should be no limit in the case of husbands wishing to cohabit with their wives even below the age of 12 provided they had attained puberty at the time.

2. *Vide* at the end.

3. There are cases of rape or seduction here and there, but not very frequent in this part. The amendment of 1925 has had no practical effect. No other measures are indeed necessary for the present except that the age limit of consent on the part of the girl will have to be raised or the consent clause altogether deleted out if the moral condition of Society is to be improved and put on a much higher level.

4. No. There is to some extent putting off marriage beyond 13, but that is not due to the law in 1925, but due to the change that is coming over in the Society by social agitation and education of men and women. Marriages are more or less controlled by the boys who are unwilling to marry themselves unless they attain a particular age or a particular standard of educational attainment. The most effective method of stamping out the evil is to consign it to the care of Society.

5. The age of girls at which they attain puberty varies from 11 to 16. There may be cases in which this limit is exceeded, but such cases are very rare and may be said to be exceptional.

This age of puberty does differ in different castes, communities or classes of Society, but the general rule is that girls in affluent circumstances mature earlier. There is also an opinion that the City girls who have opportunities to develop the emotional side of their nature attain puberty comparatively earlier than girls not so circumstanced.

6. (i) There may be cases of cohabitation before puberty, but they are very few.

(ii) Almost all the cases of cohabitation are those of "soon after puberty".

(iii) Yes, there are cases in which cohabitation takes place before the girl is full 13.

I have not known of any such case or cases coming to Court in this part of the country.

7. The practice of consummation of marriage at puberty is in this part of the country largely due to Shastrie Law of Yore. The religious injunctions are mandatory and prescribe punishments.

The authorities on the subject are given in the schedule annexed.

8. *Garbhadan* ceremony is generally performed, in token of the consummation of the marriage at or after puberty. It is a religious performance sanctioning and sanctifying cohabitation.

9. The very meaning and connotation of puberty means that the girl is fitted for cohabitation or rendered fit for it by Nature, menstruation begins from that time and continues onwards and there is no physical barrier to penetration which is necessary for cohabitation. Before that, she is unfit,

i.e., she is not physically fit or that Nature had not made her fit for sexual intercourse.

Sexual appetite or craving however, is a matter absolutely different from the so-called physical fitness and the further question whether there is real conjugal happiness from cohabiting with a particular man is still different and of a more or less important character. Fitness, at puberty for cohabitation or consummation of marriage, depends upon the physis and constitution of the girl which varies with individuals. It is possible to imagine that in the one case puberty and desire to cohabit may be coincident while in others it might take a deal of time to develop. The so-called robustness or apparent strength of physis has not necessarily to do with the desire to cohabit and seek a lover and the whole question of the instinct of love depends upon the peculiar mental and physical constitution of the particular, individual girl, her education and other surroundings.

As the period of this desire to cohabit varies, i.e., from the time of puberty, onwards and there can be no precision about it in any individual case legislation would be only justified to put the first limit at the age of puberty and not fix it arbitrarily after that, for the consummation of marriage or for legal cohabitation. Medical opinion is baffled to state exactly in the case of any or every individual, the period of this desire to cohabit; and the random proposition that the health of the girl or her progeny is impaired by cohabitation at puberty is too wide to be accepted as a uniform and correct proposition and applicable to every case and cannot surely be accepted as a wise rule of law. Even assuming that consummation at puberty is not desirable in some cases it would be unjust and hard to treat it as an offence which should be visited with punishment.

The postponement of consummation in such cases may well be placed in the hands of those who are near and dear to the couple and to whose care, they are committed by the peculiar circumstances of the particular case.

10. For an intelligent consent, the girl must at least reach the age of 20 which may be fairly said to be an age of discretion at which she can have a deal of experience of the world and decide. This is doubtless an arbitrary limit, but experience would justify the fixation of this age as a generally good and mostly unobjectionable standard. If left to herself she could well marry with her own free choice at this age when she could properly and reasonably think of all the consequences of the marriage and weigh its *pros* and *cons* with some amount of accuracy.

11. I know of cases of cohabitation before puberty and I also know that a majority of such cases, but not all resulted in a great damage and injury to the girl's health. In a few of such cases, to my knowledge, there was no progeny, but in others, where cohabitation was just at or a little before puberty neither the girl nor the progeny suffered in any wise.

12. No. All depends upon the physical constitution and general health of the girl and perhaps of the couple, i.e., both husband and wife. In an ordinary good constitution (of course of both the husband and wife) consummation at the right time, i.e., at puberty is not likely to affect, but on the other hand is likely to give tone and breadth to the health of the couple which may perhaps be in need of it. The relative strength and physical affinity of the husband and wife are great factors in the *Calculus* of the general health and well being of the persons engaged with each other and experience justifies this.

13. No, except that Dr. Sir Harising Gour has repeated his bill again.

14. Speaking generally the women in these parts do favour the early consummation of marriage for their children, but not earlier than at the age of puberty, being quite alive to the fact that consummation before puberty would ruin the girl's and boy's health and would perhaps cost the couple their precious life.

15. In fact, this is the initial question at the trials. Birth registration at the Government Offices with full details can only be its best solution.

16. No. The difficulty would increase the higher you go. To illustrate, suppose the limit is raised to 18; the girl of 17 and 18 are more alike than girls of 10 and 11, 11 and 12, or 12 or 13. Even a girl of 16 might appear like a girl of 18 and the law may be defeated by adducing evidence either that being 18 she is 16 or that being 16 she is 18. In either of these cases, the injustice involved is great and injury irreparable.

On the other hand, a girl of 13 could less appear to be 11 or even 12 and *vice versa*.

17. Not only that I would separate marital from ex-marital offences, but I would expunge the former from the Indian Penal Code altogether and leave the matter entirely to Society or the community concerned. The State has no jurisdiction in matters of this nature and Society, as distinguished from the State, must be allowed to take care of and develop itself. The laws of Society which govern and regulate the life and conduct of its component members have their sanctions and cannot be easily ignored. Outcasting and social ostracism, not to speak of social shame censure and obloquy is a much severer and more deterrent punishment than jail incarceration or fine. If necessary, Society may be asked to put a greater check on such evils than already exists or is in force. But to go beyond this and relegate these matters to the State jurisdiction and keep them on a par with offences of the Indian Penal Code would result in the total blasting of the conjugal happiness of the marrying couple and the blighting of their whole life and career.

The East must be saved its character of not being West at least in this respect.

Ex-marital offences which have the effect of interfering with the social happiness and status of persons ought to be visited with heavy deterrent punishments and the maximum punishment given in the Indian Penal Code is, I think, the right one for the offence.

18 In view of my answer to the last foregoing question I need not answer this question separately.

19. No. The present safe grounds are quite adequate legal accumen and prolific human imagination can well bring the culprit to justice. It is desirable that marital offences if not deleted out or expunged should be made strictly non-cognisable, so as to ward off police interference completely.

20. In view of my answer to question No. 17, I need not answer this question.

But provisionally if an answer is needed I will answer the question in the affirmative. This would mean that marriages may be performed at any time, but may not be consummated up to a certain limit of the girl's age. As a matter of fact, it is the consummation which counts and not the bare act of the performance of the marriage ceremony which is practically of no serious importance.

I think this view is shared by many.

21. I would prefer the latter as is obvious from my answer to question No. 17 above. It is rightly the province of the society to evolve and ameliorate itself rather than give its own legitimate function to the State to usurp and perhaps exploit it to its own advantage at the cost of the Society.

2. My answers to the rest of the questions make it sufficiently clear, that the portion of the law relating to the offences between husband and wife should be deleted out and that I entirely favour the advance on the

present law, so far as the ex-marital portion is concerned. The latter would then fall under two heads:

1st, the case of girls who are unmarried.

2nd, the case of girls who have become widows after marriage.

In both these kinds of cases, intelligent consent to cohabitation clearly means intelligent choice and selection of the husband as mere satisfaction of the carnal lust or desire would be absolutely out of the question from the Society's point of view, and as Society would always refuse to sanction such illicit intercourse. In the one case, marriage (widow marriage) will be encouraged and prostitution as such will be avoided; in the other marriages on the lines of Swayamvar will come into vogue. For such things to take their right and unobjectionable course, the girl should not be allowed to rush into the act head long and precipitately and it is Society's paramount duty to see that some good time is spared to the girl for mature consideration. The age of 20 instead of 16 as proposed by Dr. Gour would, in view of all these considerations, be the proper age for the girl's consent and I am strongly of opinion that the law should be modified and enacted accordingly.

But the thing that I would like to insist upon is this. Whatever ultimately the Age of Consent which the Committee decide whether 14 in the case of husbands or 16 in the case of strangers or any other age for the matter of that in both these cases it is necessary to add a proviso in each of such cases, viz., that the girl should have attained puberty at cohabitation and that cohabitation with a girl who has not attained puberty, even though with her consent at any or whatever age, would not exonerate the offender and that the act would be "rape" pure and simple well within the purview of the Section.

*Schedule of religious injunctions in reply to question No. 7 of the questionnaire.*

(i) धर्मसूत्रम्

“ऋतौ च संनिपातो दारेणानुव्रतम्” इति ।

ऋतोर्दिनसंख्यामाह मनुः—

“ऋतुः स्वामविकः स्त्रीणां रात्रयः शोडशः स्मृतः ।”

(ii) ऋतौ गमनं श्रुतावुक्तम्—ऋतौ भार्यामुपेयादिति ।

ऋतावगमने प्रायश्चित्तमाह बृहस्पतिः—

“आहिताग्निरुपस्थानं न कुर्याद्यस्तु पर्वणि ।

ऋतौ न गच्छेद्योभार्यां सोऽपि कृच्छार्धमाचरेत् ॥ इति ।

“ऋतौ नोपेति यो भार्यां नियतां व्रतचारिणीम् ।

नियमातिक्रमात्तस्य प्राणायामशतं स्मृतम्” । इति ।

(iii) ऋतुस्नातांतु यो भार्यां संनिधौ नोपगच्छति ।

घोरायां भ्रूणहत्यायां युज्यते नात्र संशयः ॥

इति पराशरोक्तेः ।



(iv) देवलः :—

य खदारानृतुस्रातां स्वस्थः सन्नोपगच्छति ।

भ्रूणहत्यामवाप्नोति प्रजा प्राप्ता विनश्यति ॥ इति ।

(v) यमः :—

ऋतुस्राता तु या नारी भर्तारं नोपगच्छति ।

तां ग्राममध्ये विख्याप्य भ्रूणघ्नीमिति वासयेत् ॥

(vi) याज्ञवल्क्यः :—

यथाकामी भवेत्वापि स्त्रीणां वरमनुस्मरन् ।

(vii) व्यासः :—

नास्रातांतुस्त्रियं गच्छेत् नातुरां नरजस्वलां ।

Written Statement, dated the 6th August 1928, of Col. H. deL. POLLARD LOWSLEY, C.M.G., C.I.E., D.S.O., Chief Engineer, P. W. D. (Irrigation Branch), Nagpur.

1. I believe there is some dissatisfaction among the educated classes in regard to the Age of Consent and that there is a feeling that it should be raised.

2. The main justification for an advance on the present law is, I consider, the desirability of raising the age at which married women have children. It is most undesirable in the interests of the race, that young girls, who are unfitted physically to bear children or by training to look after them, should be expected to do so. By raising the Age of Consent the children when born will be physically stronger and the mother would be better fitted not only to bear them but also to look after them. Infant mortality should decrease and the physique of the race should improve.

9. No. The age at which a girl's physical development may be considered to have reached a standard which justifies consummation without injury to her own health or that of her progeny is a matter on which the evidence of the medical profession is necessary.

12. Undoubtedly. The ignorance of young mothers must affect the development, both physical and mental, of their children; while the immature physical development of the mothers must be at least partly responsible for the existing high rate of maternal and infantile mortality.

21. Though compulsion is objectionable and it is always desirable that development should occur due to the progress of social reform, I fear that unless it is stimulated by strengthening the penal law it will be extremely slow. Everything possible should be done by means of education and social propaganda, but, with circumstances I consider it necessary that the penal law should also be strengthened.

Written Statement, dated the 11th August 1928, of Mr. T. D. DHARMADHIKARY, Additional District and Sessions Judge, Raipur.

1. There is no dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code.

The annual average number of cases challaned under section 376 in the Chhattisgarh Division of these provinces from 1920 to 1927 was 3 and the number in which there was conviction was 2. The numbers since the amendment of 1925 were  $4\frac{1}{2}$  and  $2\frac{1}{2}$  respectively. The Deputy Commissioner, Raipur, reported that in none of the cases in the Raipur District tried after the amendment of 1925 was the question of consent involved and no case was of any special importance. The Deputy Commissioner, Bilaspur, reported that after the amendment in one case only the girl was  $12\frac{1}{2}$  and no question of consent was involved in any and that there was no prosecution of a husband for raping his wife. In his opinion it is too early to express any opinion on the change in the law made in 1925. The Deputy Commissioner, Drug, reports that out of the nine cases under the section, after the amendment in one case only the age of the girl was between 12 and 14 years and he attributes the slight increase in the number of the prosecutions to better reporting of crime than to the revision of the law. I personally did not come across any instance in which dissatisfaction was felt with the state of the law as to the Age of Consent as it exists at present, although rare instances may be found in which a husband and his wife had occasion for cohabitation before the latter attains the age of 13. Girl-marriage or child-marriage does not obtain among all Hindus but only among some small sections. Non-Brahmins are not bound to marry their girls before puberty.

2. In my opinion the law on the point should be retained as it is. In a majority of cases it is found that girls mature between the ages of 12 and 13 and consummation rarely happens before 13. So while for the sake of advancement it is desirable to retain the age of 13 as it is in the exception in section 375, it is not desirable to raise the age above 13. The reasons for this will be found in the answers to other following questions.

3. The crimes of rape are not frequent in this part of the country as the statistics given in my reply to the first query will show. It is too early to say that the amendment of 1925 was effective or not.

4. The amendment of 1925 has had no effect either way on:—

- (i) The postponement of the consummation of marriage.
- (ii) On the stimulation of public opinion in that direction except that it must have been effective by the stimulation of the opinion of the educated people who have already made advances in this respect considerable years before the amendment of 1925.
- (iii) On putting off marriage beyond 13 except among the educated people described above. I would not propose to make any suggestion to make the law effective.

5. Between 12 and 13 and in some cases 14. I don't think this differs in different castes, communities or classes of society except perhaps in the cases of labouring classes in few cases the age of attaining puberty might go as high as 15.

6. (i) No.

(ii) Yes.

(iii) No.

None of such cases come in Court as the above quoted statistics will show. The figures of cases under the law in question in other parts of these provinces must be still lower except perhaps Chanda district.

7. There is no consummation of marriage before puberty. The consummation of marriage at or soon after puberty is due to religious injunction or injunction of custom or long standing practice. The authority usually followed for religious actions is धर्म सिंधु । “Dharma Sindhu.” A marriage in Hindu law is not only a *Secular Act* of mutual agreement but is a religious act amounting to a sacrament. The धर्मसिंधु “Dharma Sindhu” says under (गर्भधान) “Garbhadan” or consummation ceremony ”

after the girls puberty “ व्याधितो बंधनस्थो वा प्रवासेष्वथर्वसु वृद्धाबंध्या  
मसद्भृतां मृतायत्यामपुष्पिणीं कन्यासूवहुपुत्रांच-अगच्छन्नैवदोषभाक् ।”

[A husband is not liable to any blame if he does not cohabit with his wife at puberty and at subsequent menses if he be afflicted with disease, if he be imprisoned or arrested, if he be in journey, or on a holy, day ( पर्व ) or if the wife be old, incapable of remaining pregnant, of immoral character, if her children don't live when she has no menses, if she produces female children only or if she produces many male children.] This shows that a person who otherwise does not cohabit with his wife at or after puberty at menses commits sin.

प्राप्ते द्वादशमे वर्षे यः कन्यां न प्रयच्छति ।

माताचैव पिताचैव ज्येष्ठो भ्राता तथैव च ।

त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलां ॥

यस्तां विवाहयेत् कन्यां ब्राह्मणी मदमोहितः ।

असंभाष्यो ह्यपाङ्क्त्यः सविप्रो वृषलीपतिः ॥

यमः २२, २३ ।

If a girl be not given in marriage when she has reached the 12th year, her mother and father as well as her elder brother these three go to the infernal regions having seen her catamenia ( ) before marriage. That Brahmin who being blinded by vanity espouse such a girl should not be accosted, and should not be allowed to sit at a feast in the same line with Brahmins. This will show that person not doing connection with his wife at puberty is deemed by religious law as a sinner. Customs have sprung up in accordance with this authority among lower castes who are not versed in religious law or are not allowed to read it.

8. *Gaona* or *Garbhadan* ceremony is performed in this part of the country among the Brahmans and those castes who follow the Brahman's rites or ceremonies. Among other castes some such ceremony called “*Pathoni*” is performed. It means sending a woman to her husband at or soon after puberty. It generally coincides with the consummation of marriage although among some communities it may at times precede the consummation. It is performed generally at puberty or within a year or six months after it.

14. Yes.

17. Yes. The maximum punishment for extra-marital offenders should be of the nature and amount provided for at present. The maximum punishment for the offence of rape with one's own wife when she is under 12 years of age should remain the same as it is at present, but that when the wife is 12 or above should be fined only. For in this case the man commits the act owing to belief that otherwise he would be a sinner in the eye of religious law and would offend the feelings of his elders and caste men.

20. Penal legislation fixing a higher Age of Consent for marital cases is not likely to be more effective than legislation fixing the minimum age of marriage. The latter is more effective. In the former case the legislation remains a dead letter for want of complaints and difficulty in the detection of the offences. The latter would be in consonance with public opinion. It would not be quite against religious authority also. For though the Shastras enjoin marriages before puberty they do not make marriages after puberty invalid and allow them on performing some expiatory ceremonies. “*Dharma Shindhu*” under marriage says that the giver, the girl to be given in marriage and the bridegroom before fit for giving and marrying after the puberty of

the girl after observing some prescribed austerities making some prescribed gifts and performing some prescribed sacrifice (home) (विभक्तात् पूर्वकन्याया रजोदर्शनै.....इति कन्या रजोदर्शन निर्णयः) ।

It further allows a girl to marry herself after puberty if there be no giver, after waiting for three years and allows the bridegroom to accept such a girl without being a sinner.

21. I rely more on the progress of social reform by means of education and social propaganda. I am like Mr. M. K. Acharya, Pandit Madan Mohan Malaviya, the Hon'ble G. S. Khaparde and the Hon'ble R. B. Lala Ram-sarandas (Punjab) of opinion that penal legislation ought not to be introduced for the indirect object of furthering social reform. Legislation on the point in question means punishing persons who are not really in fault. Such legislation instead of being useful gives loopholes which enable the enemies of a man to take advantage of the opportunity and harass him. A conviction under the penalising law acts so unjustly and to the extent that it does away with the married life of the couple. As observed by Mr. M. K. Acharya it is great outrage upon the feeling of humanity that a young boy should be sent to jail because he approaches his wife, his lawfully wedded wife, a little more closely than your man-made law permits. As said by Mr. D. V. Baldi there is no need for wounding the religious susceptibilities of a large number of orthodox people. Each individual differs from the other so far as constitution is concerned. It is not proper to lay down any further age-limit. As said by the Hon'ble G. S. Khaparde, legislation when forced upon a large number of people who do not approve of it leads to evasion, often to disobedience and ultimately results in greater misery than the evil to be cured.

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Written Statement, dated the 23rd August 1928, of Mr. L. R. ABHYANKAR, B.A., LL.B., President, Municipal Committee, Yeotmal.

1. As regards the Age of Consent in the case of husband, we cannot say that there is any dissatisfaction or that there is any real demand from among the people for the change of law, on the subject, but as regards the cases between women and strangers it must be said that it is keenly felt that the Age of Consent should be increased.

2. In the case of the Age of Consent between husband and wife, it must be said that no sufficient trial has been given to the recent legislation on to its operation and that the time passed after its enactment is very short and it cannot be said that there is at present any necessity for further advance in the matter; again in the case of wife the age of puberty among Indians is 13 or 14 and it is not desirable at the present stage to penalize husbands going to their wives after puberty when the age is 13 or above. Besides, it is very difficult to detect such cases and experience shows that among the lower classes where marriage means money for the girl's father, attempts are actually made by the fathers of the wives to concoct such charges against their sons-in-law. Again, among the poor classes it cannot be said that we have reached the stage when we can prohibit and detect every case of intercourse and under the circumstance, it will be cruel to punish the husband who will be brought to book only in the cases of ill-will between him and wife's relations. Under the circumstances, the likelihood is of innocent husbands being harassed. Therefore we should wait and see how the present age-limit works. So in the case of husbands, it will be risky at the present stage to alter the law. Besides in such cases it is desirable for the society to train itself by means of legislation which in the first instance will affect the strangers who are in the opinion of the society committing an act which

is abhorred and then apply gradually to cases of husbands who are not so much considered to be wrong under the present state of things. Public opinion in general at present views with dislike and disgust upon a husband, only if he approaches the wife before puberty, nor so in the case of strangers; they are to be punished in the interest of society and the same interest demands that they should be treated and punished more severely especially because they are taking advantage of girls who have not formed as yet any mature understanding.

In the case of strangers, it is absolutely necessary to increase Age of Consent, because it is in the interest of society to protect girls above the age of 14 even, because we cannot say that the age is in an age of discretion. Besides, when we have raised the age from 16 to 18 in the cases of 372 and 373 we must bring the law in conformity, by raising the Age of Consent to 16.

3. Crimes of rape and seduction may be said to be frequent in this part of the country especially during the last 1—2 years and the pity of the cases during these years, is that several of them concern small girls and boys among rural population. It is significant that out of these I do not remember a single case where the parties are husband and wife. All of them are the cases of strangers.

The latter part of the question cannot be answered to-day because only short time has passed since the recent legislation.

4. The same answer must be given to this question as the one given to question No. 3 but in the case of husbands, we have not heard of any case when consummation was postponed or marriage was postponed because of the law.

I would rather favour the prohibition of marriage of girls below a particular age, than make the intercourse between husband and wife after puberty penal.

5. I would put the age of puberty among Hindu girls at 12—14. It varies with the food and other habits of the people.

6. Among the high classed Hindus, on this side we cannot say that cohabitation before puberty is common, but it must be said that in the case of married girls the cohabitation soon after puberty is most common. After puberty in the case of married girls, no one looks to age; on the contrary it is supposed to be sacred to have *Garbhadan* as soon after puberty as possible.

Such cases, however have not come to Court often. In my knowledge there were 2 cases of rape between husband and wife came to Court during the last 4—5 years but both ended in acquittal and it was held that they were due to spite on the part of the father-in-law against his son-in-law.

7. Yes, but we do not know the exact authority.

8. Yes. *Garbhadan* is usually performed in our part of the country. It generally coincides with the consummation of marriage but in some cases it takes place some days or months after the consummation but never long before the consummation.

9. I cannot answer this question definitely as it requires detailed knowledge of physiology, but in my opinion it must be said that the girl's development at the age of 18 or 4—5 years after puberty is the proper development for cohabitation.

10. I would put the age of girl at 18 at which an intelligent consent can be given.

11. I cannot answer this.

12. I do consider early maturity and consummation responsible for the infant mortality.

13. No further development.

14. Cannot answer.

15. Yes, in out part of the country the Kotwar books are all kept in the custody of Kotwars and Patels and there is no proper check on them. They are found tampered with several times and in almost every case it is easy to assail them. Besides they do not contain the names of persons born as the entries are made before the children are named and hence there is confusion. I would suggest that the Kotwar Books should be kept in the eustody of taluq officers at least after a year and there should be a proper check and inspection. There should also be a provision to put down the name of the child after 12 days' failure of doing which should be made liable for a small fine. The Birth and Death Act should be amended accordingly. This will be more necessary when the act seeks to punish men with different punishments when they cohabit with girls of less than 12, (b) between 12 and 13, (c) between 13 and 14 and after 14 or say after 16. The medial evidenece of age about that period to say the least is uncertain.

16. Cannot answer this question.

17. I would not like to separate extra-marital and marital offences into separate offences. I would rather favour the non-inclusion of section 376-A and thus do away with the penal provision in respect of husbands cohabiting with wives between 13 and 14. I would favour that there should be only one offence and that too rape. The case of husband is bound to be dealt with leniently and there are already provisions in the present Penal Code to meet that case. It looks like going back but that is, in my opinion, necessary at present to train the public opinion before we take a definite jump forward and thus have legislation harmonious with public opinion. Even for the matter of that, if it is decided to raise the age to 14 as the Age of Consent in marital cases, in such cases the offence should be taken to be rape and nothing less.

18. I would suggest no change in the trial except that in the case of husband it should be non-cognizable by poliee.

19. Cannot answer as I have not come across a case in which there was such suppression of offences.

20. In my opinion I would favour the raising the age of marriage if at all that is feasible but I would not favour the raising the Age of Consent in the case of husband as in my opinion that might end only in harassing the husbands. I think the fixing the age limit of marriage also should be welcome but I am doubtful whether we can launch upon such litigation without upsetting the present condition of society. It may not affect the higher elasses much but it will cause considerable discontent among the lower classes.

21. I would rely upon education and propaganda for the purposes of social reform but will not hesitate to take the help of law only so far as it recognizes the present habits of the society. No doubt the penal legislation has to be very sparingly taken advantage of but if taken advantage continuously it will certainly help to accelerate space of reform to a certain point. I would favour very slow but sure advances by means of legislation.

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**Written Statement, dated the 21st August 1928, of Rao Bahadur  
B. R. ANGAL, President, Bar Association, Amraoti.**

I have the honour to submit the following opinion, on behalf of the Bar Association, on some of the points raised in the questionnaire enlosed with your letter, dated the 26th July 1928.

2. The Association thinks that the questions detailed in your questionnaire can be more conveniently dealt with, in a general way, by grouping them under two main heads:—

- (A) Intra-marital offences, and
- (B) extra-marital offences.

3. As regards offences coming under head A, the association is of opinion that the law now existing should be left unaltered. These offences never see the light of day and come to Court in extremely rare cases. For obvious reasons, every member of the family including the victimised girl-wife is interested in suppressing the offences and though the association would like to see that consummation of marriage is delayed beyond 14 years in actual life, it realizes the difficulties of achieving this object by means of penal legislation. The association would, therefore, trust more to spread of education and private propaganda in this connection.

4. As regards extra-marital offences of rape, the association strongly advocates that the Age of Consent be raised to 16 years (completed). These offences are very common in Berar. In the year 1927, in the East Berar Division (which includes the Revenue Districts of Amraoti and Yeotmal) out of the total of 30 and odd Sessions Cases—as many as 12 cases were rape cases—in almost all of which convictions followed. In some of these cases, consent was pleaded and the question of the age of the girl-victim assumed importance. As these crimes occur more frequently in less advanced sections of society where reliable documentary evidence of the date of the birth of the girl is not available, Judges and Juries often find it difficult to fix the age of the girl, medical evidence also about age is necessarily inconclusive, as there are no distinctive and definite physical characteristics to fix the age of 14. The association thinks that medical evidence is likely to be more definite, if the Age of Consent is fixed at 16, when wisdom teeth are more likely to appear. The association also believes that at the age of 16, a girl having maturer understanding, would be better able to judge the consequences of her act and her consent is more likely to be free. It is a matter of common experience that though girls are really unwilling to allow intercourse, they often submit to superior strength and do not offer effective resistance, and Courts are, at times, inclined to construe this conduct as consent.

5. The association therefore strongly urges that the Age of Consent, outside marriage, be raised to 16 years (completed).

6. The undersigned regrets that he will not be in a position to give oral evidence, owing to pressure of work.

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**Written Statement, dated the 20th August 1928, of K. B. L. SETH, M.A., LL.B., I.C.S., District and Sessions Judge, Wardha.**

1. Yes. There is considerable dissatisfaction with the present state of law amongst the educated and the thinking sections of the public. Even amongst persons with conservative ideas and amongst the women, the evils arising from consummation of marriage with immature girls are beginning to be realised and many of them would welcome strengthening of the penal law in this respect.

2. The Age of Consent under the existing law is 14 for extra-marital and 12 for marital relationship. This is undoubtedly low. In India a girl attains puberty about the age of 13, but she is still too delicate to bear the strain of cohabitation or of maternity. Early marriages and consummation with girls who are not physically fit for it are responsible to a large extent for the deterioration of the public health, high infant mortality, prevalence of disease, which often proves fatal, amongst young women, and a hundred other ills. There are, of course, several other causes contributing to this state of affairs, but there can, to my mind, be hardly any doubt that the prime responsibility must be attributed to the practice of early marriage and consummation. In the interests of the public health it is imperative that steps should be taken to check this as soon as possible, and necessary legislation cannot be postponed for any length of time without grave danger to the health of the people.

2. Not only does the practice of early marriage and cohabitation affect the health of the population, it also retards full intellectual development and

cripples enterprise and ambition. Men and women marry and have offspring when they themselves have hardly outgrown their childhood. They are neither physically, nor intellectually and mentally, well equipped to understand discharge properly the responsibilities of marriage and parenthood. The result is that children do not receive that attention and instruction in the early years of their existence, which is necessary for their full physical, intellectual and moral development. The father also, finding himself on the threshold of life faced with the responsibilities of a growing family, is crippled at the outset in his endeavours to chalk out a career for himself, and the result is that more often than not he has to content himself with the first chance that comes along. My belief is that want of initiative and enterprise, and consequent unemployment and overcrowding of the few well-known occupation, which is so unhappy a feature of modern, especially middle class, India is in a large measure due to this cause.

3. I may also mention that early marriage (and consummation) is also responsible for the large number of child-widows, than which there is no other more heart-rending spectacle in Hindu society. According to the census figures for 1921 the number of widows below 20 years of age is as shown in the following table:—

Age.	Number.
0—1 . . . . .	759
1—2 . . . . .	612
2—3 . . . . .	1,600
3—4 . . . . .	3,435
4—5 . . . . .	8,693
5—10 . . . . .	102,293
10—15 . . . . .	229,124
15—20 . . . . .	517,898

These figures tell their own melancholy tale and further comment is unnecessary. Many of these unfortunate victims of social custom are driven to shame and prostitution. A good deal of this misery and degradation could be avoided but for the pernicious custom of early marriage.

4. It is not necessary for me to enlarge further on this point. As I have observed above the public is awakening to the dangers of early consummation and it appears that the moment is opportune for a further increase in the Age of Consent. I do not consider that the proposed legislation will be very much in advance of public opinion. My own impression is that the Government, in fear lest it should offend the religious susceptibilities of the people, has been unduly timid in undertaking legislation of this description. It is not that the Government has never interfered in religious observations when considerations of public welfare demanded it. There is a precedent in the abolition of *Sati*. Even in conservative Afghanistan and Turkey, the Governments of these countries have not hesitated in resorting to compulsion for getting rid of *Purdah* or polygamy, etc. Child-marriage and early maternity are more harmful to society than *Purdah* and polygamy. Therefore there is sufficient justification for a bolder policy on the part of the Government.

5. Even if the proposed legislation were to be a little in advance of public opinion it would not matter much, for one of the functions of law is also to lead, guide, and regulate public opinion, to encourage salutary customs, and to check those which are injurious to the body politic. It is true that legislation should not be so much in advance of public opinion as to be ineffective by not coming the support of the majority of the people, but as I have endeavoured to show above this will not be the case in this instance.

6. My own belief is that an advance in the Age of Consent will be welcomed by a large number even amongst those persons who still find



themselves unable to break away from the past tradition of early marriage. An interesting instance of this very recently came to my notice. A well educated and well placed gentleman (a B.A., B.L.) was intending to marry his 18-year boy to a 11-year old girl, and, on my remonstrating in a friendly manner, replied that although he fully appreciated the evils flowing from such a custom he did not feel himself strong enough to withstand what he termed the fear of social obliquy. In course of conversation he told me that the proposed legislation for advancing the Age of Consent would be a boon to persons like him, as it would provide them with a refuge behind which to take shelter. I believe there must be a large number of such persons who have not got the courage of their convictions, and who, realising that the practice is undesirable and should not be encouraged, yet imagine themselves unable to tear away from it for fear of social stigma. Legislations on the lines proposed will strengthen the hands of such people and will command their support.

7. I consider therefore that an advance in the present law is imperatively necessary in the interests of the well being of the Indian Society.

*Question No. 3.*—It is very difficult to give a precise reply to this question for the information available is so meagre. I believe, however, that rape is not very common, but crimes of seduction are much more frequent especially amongst the lower classes. Most of these cases never come to light, but there can hardly be any doubt that amongst the lower classes a good deal of seduction of young unmarried girls goes on undetected. I do not think that the amendment of the law in 1925 has had much effect, so far, in preventing or reducing improper seduction of girls for immoral purposes. The chief difficulty lies in the detection and successful prosecution of such cases in the law Courts, for even when such cases come to the knowledge of the parents or the village elders, they are naturally reluctant publicly to expose the dishonour of their family in a law Court. It is difficult to suggest any measures, beyond greater vigilance, for making the law effective in this direction. One must rely upon general diffusion of knowledge amongst the masses and the education of girls, so that the qualities of self-reliance and self-protection may be properly developed in them.

4. The process of public awakening to the evils of early cohabitation commenced long before 1925, but though it was slow in the beginning, it has made rapid strides lately. The amendment of the Penal Code in 1925 and the subsequent discussions in the press and on the platform did much to focus public attention closely on the acuteness of the problem, and thus it considerably strengthened the movement against early marriage and cohabitation. In this indirect manner the legislation of 1925 has had great influence in putting off marriages and consummation thereof beyond the age of 13. Incidentally this illustrates strongly the propagandist effect of legislation to which reference was made in para. 5 under Question No. 2.

2. The following figures from the census reports for 1911 and 1921, giving the number of married persons below 20, reflect in an interesting manner the advance of public opinion against early marriage, and my impression is that at the next census the advance will be found to be very much greater.

Age.	Number of married persons in			
	1921.		-1911.	
0—5	{ Males	. . . 110,634	151,518	
	{ Females	. . . 218,463	302,425	
5—10	{ Males	. . . 757,405	810,577	
	{ Females	. . . 2,016,687	2,219,278	
10—15	{ Males	. . . 2,344,066	2,403,136	
	{ Females	. . . 6,330,207	6,555,424	
15—20	{ Males	. . . 4,077,400	4,364,438	
	{ Females	. . . 6,635,340	10,087,024	

In the decade 1911 to 1921 there was a little increase in the population of India, but as the above table shows, the number of married persons below

20 decreased at all the ages. This seems to indicate clearly the existence of a distinct movement against early marriage.

3. Thus the only effect so far of the legislation in 1925 has been indirect. In order to make the law fully effective it is also necessary, in my opinion, side by side to undertake legislation penalising early marriage, as proposed in the bill of Mr. Haribilas Sarda. But as observed above, mere legislation would fail to achieve its object unless it is accompanied by social education and propaganda. This is a long standing evil and cannot be eradicated in a short time. It will be necessary to fight it in every manner possible, by legislation as well as social reform propaganda. The chief value of legislation in a matter of this kind is that it strengthens the hands of the reformer and gives a lead and impetus to public opinion along the right lines.

5. The usual age for the attainment of puberty by girls is between 13 and 14 amongst the Indian people. I do not think that this age differs widely in different castes, communities or classes. Perhaps, in the case of the Europeans and the Anglo-Indians the age is somewhat higher.

6. The movement against early marriage and cohabitation is progressing at an increasing pace, but in a vast country like India large masses of population have not yet been affected by it. Therefore cohabitation with girls on attainment of puberty, or soon after, is very common, while cohabitation before puberty is also not infrequent. Naturally this is more common amongst the backward and the orthodox communities.

(2) Cases of cohabitation with immature girls seldom come to Court for the reasons given already in question No. 3, unless the unfortunate creatures sustain abnormally severe injuries or succumb to them.

7. Amongst the orthodox sections of the Hindu public there is a widespread belief that early marriage is enjoined by religious injunction. But the main sanction, I am afraid, is fear of social obloquy. I am unable to quote chapter and verse for this religious belief. As a matter of fact this is a debated point as the reformers deny the existence of any authority in the scriptures for this practice. So far as I am aware, in the present age, beyond a vague feeling that marriages after puberty do not have religious efficacy and beyond the fear of social stigma, there is no direct penalty for the breach of this so-called religious duty.

8. Except in the advanced sections of the population and amongst the lower classes, *Gaona* or *Garbhadan* ceremony always follows marriage. People hailing from Northern India have *Gaona*, while the Maharashtra and other Southerners have *Garbhadan* (or *Shantik*). Usually it takes place on the appearance of the first menstruation and precedes actual consummation.

9. This is really a question for medical experts. But if lay opinion, based on experience and observation be permissible, I can say unhesitatingly that attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. My belief is that for an average healthy girl the age of 16 is the minimum before she can be considered to have reached that stage of development when consummation can be permitted without much danger of injury to her own health and to that of her progeny, while in all almost all cases postponement till the age of 18 or 20 will be found to be very beneficial. I take the liberty of reproducing the following instructive extract from Lankester's *Tuberculosis in India*, quoted as a footnote on page 158 of the 1921 Census Report for India:—

“ Every one is aware of the consequences of sexual excess, the weakness of mind and body which results, and the extreme slowness with which restoration comes, if indeed it comes at all. Many people seem to think that such excess is only harmful if unlawful, forgetting the fearful strain upon the constitution of a delicate girl of 14 years or even less, which results from the thoughtless incontinence of the newly-married boy or, still more, the pitiless incontinence of the remarried man. Serious as these causes of strain are upon the health of the young married girl they sink into insignificance in comparison with the stress of maternity

which follows. It is a truism to say that the processes connected with reproduction, which from one point of view may be regarded as the most important of human functions, should be allowed to take place under the most favourable conditions possible. Surely it would seem to be of fundamental importance that these processes should be delayed until not only the special organs concerned, but also the body as a whole, shall have attained their full development and be prepared for this great crisis. For in no other crisis of life does the ultimate result depend so much upon the physical condition of the body. In this connection we have, of course, to think of the nourishment of the child after birth as well as of pregnancy and child-birth. Nevertheless custom is allowed to carry the day, and to dictate that all this strain shall be deliberately imposed upon girls at a period when it is obvious that their bodies are not as yet capable of enduring it with safety. It is, of course, argued that a warm climate favours precocity and that the girls in India develop at an earlier age than in more temperate climates. Let even so much as two years be conceded and in place of 18 years, which may be reckoned as the lower limiting age in ordinary cases of marriage in the West, let 16 be the age which popular opinion shall regard as the normal one for marriage in this country. The result would be an incalculable gain in the health of the women of India and also in that of the children whom they bear. In place of this what do we find? With thankful acknowledgment of the success which has met the efforts of those who have already done so much in this direction, 14 years is yet the upper limit of age for marriage in very many parts of India, which in multitudes of cases takes place at 13 or even 12 years. *Well were it for these children if maternity when it came were accompanied by a minimum of risk and a maximum of loving care. But, alas, the reverse is too often the case."*

10. In India girls probably acquire knowledge of sexual matters much earlier than in the West, but in spite of that I do not think that they fully realise the real nature and the consequences of the sexual act before they are at least 16. Before the attainment of this age I do not think that an average girl is in a position to give an intelligent consent to cohabitation. I know of an educated (B.A.) Indian girl, who at the age of 22 was so little prepared for the act of cohabitation, that it came as a great shock to her after her marriage, and for a long time she could not overcome a feeling of revulsion to it. It is conceded that this was an extreme case of highly strong delicate girl. But it shows that notwithstanding general knowledge of sexual matters, there may co-exist extreme ignorance of the nature and the effect of the sexual act.

11. As a judge it is hardly possible for me to have any professional experience of the kind described in this question. But I have come across scores of cases in which girls and women have lost their health and beauty, and have fallen an easy prey to disease and death, on account of early cohabitation and immature confinement. For obvious reasons I am not in a position to disclose the names of the persons concerned. I have also seen that children born of immature mothers, before they are fit to bear the strain of maternity are generally physically and mentally deficient. This was very strongly demonstrated in two cases, about which I have personal knowledge, in which the mothers, who as girls were exceptionally handsome healthy and blithe, commenced having children soon after they had attained puberty. So far they have had more than half a dozen children each. In one case the first child is almost an imbecile; in the other also he is intellectually very weak. The second issues in both the cases are somewhat better, but still their mental development is below the average. The subsequent children are all healthy, good looking and intelligent. The parents in both the cases were originally full of health and vigour, and are above the average in intelligence.

But now the mothers have practically wrecked their health and seldom leave the sick bed. In a matter which is so full of complexities, it is difficult to be dogmatic, but my own belief is that the incomplete intellectual and physical development of the first two issues, is, in the main, due to the fact that they were born before the parents, and especially the mothers, had reached the stage when they were physically fit to give birth to healthy and intelligent children.

12. There are, of course, several causes leading to high maternal and infantile mortality, but there cannot be the least doubt that early consumption and early maternity is primarily responsible for it. When children are born before the parents have themselves grown out of childhood, they are not only endowed with low vitality, physical as well as mental, but their parents themselves are not sufficiently equipped to give them proper training and upbringing. This must react very largely on the intellectual and physical progress of the people. In this connection please see also the replies under question Nos. 2 and 9.

13. As I have already stated above (question No. 4) the amendment of the law in 1925 and the subsequent public discussion of the problem have largely contributed to the education of public opinion, and so far as my experience goes even amongst the backward classes and amongst the women a general awakening is taking place. This is, of course, more marked amongst the educated persons, but I do not think that it is confined to particular castes or communities.

14. Amongst the lower and the orthodox classes the women do favour early consummation of marriage for their children.

15. Most of the cases under sections 375 and 376 of the Indian Penal Code, even if true, fail on account of the difficulty of determining the exact age of girls. Medical testimony, although sometimes the only guide, does not often help much in the determination of age with sufficient preciseness. The only remedy for this unsatisfactory state of affairs is to develop and perfect the agency for registering births and deaths. In towns having municipalities or notified area committees or village panchayats there should be no difficulty in maintaining accurate and reliable records of all births and deaths. These local bodies can be entrusted and required by statute to take necessary steps in this direction. But difficulties are greater in case of villages, which contain the bulk of the population in this country. The kotwars' books at present are not sufficiently reliable, and often have to be discarded in course of trial. This is due chiefly to two reasons: (1) the machinery for registering births is not sufficiently complete and reliable, and (2) there is considerable danger of tampering with these books when cases actually come up in Court.

(2) With regard to the first point I should suggest that strict orders should be passed enjoining on all kotwars to report births at the station house with the least possible delay (which should not in any case be more than a week). In many villages some difficulty is experienced because no educated man is available to make the necessary entries in the kotwars' books. In such cases the kotwars should be asked to get the necessary entries made by the patwari of the circle, and it should be laid down as one of the duties of the patwari, that he should make the necessary entries, if required to do so by the kotwar. It will not be necessary for the patwari to go to the village in question for this purpose only. The kotwars can be instructed to go to him, if necessary. Further the day and the date of birth should both be recorded, and if possible the name of the new-born infant also. The checking of the vital statistics is also very unsystematic at present. The Naib-Tahsildars, Tahsildars and Sub-Divisional Magistrates do not regularly visit all the villages in their charge, quite a considerable proportion of which do not receive any visits from these officers for years together. I believe that the Police Sub-Inspectors and Gashti Head Constables are required to visit each village in their charge at least twice a year. In any case they can easily do so and can be so required by the rules. But I am afraid they take this part of their duty (*viz.*, checking of vital statistics) lightly, and there is reason to think that checking of vital statistics by them is perfunctory.

It should be made one of the duties of Sub-Inspectors or the Head Constables to check all the entries since the last visit, and to initial *each* entry in token of having done so. In an average village at the most there are four births in a year, and the check of these entries should not take more than 10 minutes. If this is done regularly and systematically the evidentiary value of the books will be considerably enhanced. The Naib-Tahsildars, the Tahsildars, and the Sub-Divisional Officers also should be made to realise that while in camp they should be more careful about the check of vital statistics.

3. With regard to point two, the first thing necessary is that the paper and the binding of the kotwar's "Fouti-paidayesh" books should be improved. Generally when required in a law Court these books are from 10 to 12 years old, and by that time the paper becomes brittle, the binding is practically destroyed, so that it is very easy either to abstract a particular page or to substitute another in its place. If better paper is used, and books are bound strongly, these dangers can be obviated. Secondly, after a book is finished it should not be allowed to remain in the custody of the kotwar or the mukaddam, as is the case at present, because they cannot be expected to take proper care of them. They should either be deposited and preserved at the station house, or better still at the Tahsil. If they are so deposited there will be practically no danger of subsequent interpolations, when a case arises.

16. This is a question mainly for the medical experts, but in practice I have found that medical witnesses often fail to give the age with the required degree of exactitude.

17. I should consider that separation of offences into two categories, extra-marital and marital is desirable. My belief is that an increase of the Age of Consent beyond that proposed in Sir H. S. Gour's Bill would not be unjustified. Penalties as proposed in this Bill are suitable. It is good that the option of the punishment of fine or imprisonment has been provided for in the proposed section 376A, because it would be desirable in the beginning to leave the matter of punishment in such cases to the discretion of the Court, but necessary instructions for the exercise of this discretion may be embodied in a circular to be issued by the High Court of each province. (Just as is done in the case of the Central Provinces by the Judicial Commissioner's Criminal Circulars).

18. I should not recommend any change in procedure in the trial of offences without the marital state. But in the case of marital offences I should think that, at any rate in the beginning, these trials should be held in camera, nobody except the judge, the accused, and the counsel for the prosecution and defence being permitted to be present at the time of the trial, as is the case in England with regard to incest trials. I am perfectly aware of the objections to a trial in camera and also know that some of the eminent judges in England have expressed their disapprobation of this form of trial for incest offences; but in view of the peculiar nature of this class of offence and the prevailing circumstances, it would be desirable to provide for trial in camera to start with. This might reduce the difficulty in detection of offences within the marital state, and would also be desirable in view of the great influence which a trial of this description would have on the home life of the parties concerned. For these reasons it might be preferable in the beginning to avoid giving undue publicity to such offences. Further suggestions have been given under the next question.

19. Marital offences should be non-cognisable, as has been proposed by Sir H. S. Gour, but in order to prevent abuse of this section I should further recommend that these cases should be triable only by Presidency Magistrates and District Magistrates, and it should be further laid down that the District Magistrate should not issue process against the accused until, after such preliminary enquiries as he thinks necessary, he considers that there is a sufficient case for trial. This preliminary enquiry will be of the nature described in section 202 of the Criminal Procedure Code, but it should be laid down by statute that it should not be held by any officer, who is not either the District Magistrate himself, or a Sub-Divisional Magistrate

or a First Class Magistrate. If these suggestions are accepted the chances of improper prosecution and extortion should be minimised. Prevention of collusion is a more difficult matter, and until public opinion advances sufficiently in this direction, I do not know how it can be prevented.

20. I consider that penal legislation fixing a higher Age of Consent for marital offences as well as legislation fixing the minimum age of marriage are necessary. Without legislation on both these points the desired end would not be achieved (*vide* question No. 4). I do not think that any one of these alternatives is less or more in consonance with public opinion than the other.

21. Strengthening of the penal law as suggested in reply to the previous question is necessary. But side by side progress of social reform by means of education and social propaganda is also absolutely necessary (*vide* Question No. 2). The greater the enlightenment and co-operation of the public the greater would be the success achieved.

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**Written Statement, dated the 14th August 1928, of CAUDHRI PRAGI SINGH, Rais, Honorary Magistrate, and Chairman, Municipal Board, Banda.**

1. Yes, to a certain extent, but it is difficult for me to give the reasons

2. I am of opinion that the Age of Consent should be raised to 16 and my reasons for the same are as follows:—

(1) It will prevent cases of rape.

(2) It will raise the tone of morality.

3. Cases of seduction and rape are frequent in this part of the country. The amendment has reduced cases of rape to a certain extent, and the still raising of the age to 16 would prevent such cases further.

4. The amendment has not in any way affected the three points involved in this question. In my opinion unless legislature takes steps to penalize marriages below 14, there is very little hope of improvement in this connection.

5. The usual age at which girls attain puberty is 14 years. It differs in different castes. Generally girls of those castes who are accustomed to manual labour attain puberty sooner than those who are not.

6. (i) Among lower classes.

(ii) Among all classes.

(iii) In some cases among uneducated higher classes and lower classes. No cases of this sort come to Court.

7. Generally persons of lower classes, such as Chamars, Kories, etc., are accustomed to early marriage and that is not based upon any religious injunction to my knowledge but to the custom of their society. Among higher classes early marriage also take place and it is based upon a religious belief that a girl should be married before menstruation.

8. *Gaona* ceremony is performed in this part of the country and generally it is anterior to the consummation of marriage and sometime after 3 years, but it is not necessarily after the attainment of puberty rather it is sometimes before puberty or very soon after it. But this is generally amongst persons of lower classes.

9. I do not consider that the attainment of puberty is a sufficient indication of physical development of a girl to justify consummation of marriage. In my opinion, age of 16 is the correct age at which consummation of marriage should take place and then there shall be no danger to the health of the girl and that of her progeny.

10. At the age of 16.

11. I am not able to answer this question with sufficient detail.

12. Yes. As a lay man I think that early consummation of marriage affects very much the health of the girl and the result is that the issues are weak and consequently there is high infantile mortality. Such issues are no doubt intellectually and physically weak.

13. People of this part of the country being mostly backward in education, there is no question of any public opinion regarding the Age of Consent. It is only those classes of persons who are literate and have some concern with Courts of justice that this opinion is common and they are in my opinion in favour of raising the Age of Consent.

14. Women, as a rule, like early marriages and hence favour early consummation of marriage.

15. No doubt there have been difficulties in determining the age of girls in connection with offences under sections 375 and 376, Indian Penal Code, and the only way to minimise these difficulties is to raise the Age of Consent to 16, for at that age it would be easier to determine the age of the girl.

16. My answer to question No. 15 covers answer to question No. 16.

17. I am in favour of separating extra-marital and marital offences into different offences, because that will be a step towards preventing marital offences to a certain extent. The punishment of two years' imprisonment for extra-marital and 3 years for marital, is in my opinion reasonable.

18. I am not in a position to answer this question effectively.

19. None beyond those existing at present.

20. Legislation fixing the minimum age of marriage would in my opinion be more effective, but that would not find favour with opinion of all classes of persons.

21. Progress of social reform by means of education and social propaganda would better secure the object in view but at the same time the help of the penal law is absolutely necessary.

### Written Statement, dated the 14th August 1928, of SITABAI LANDGE, Yeotmal.

1. Yes, there is.

2. My opinion is for making an advance on the present law because girls of 13 and 14 are hardly able to realise the consequences from giving or withholding consent. Again their age is hardly sufficient to exercise their right of consent. Even consent of a person below 18 is, as I learn not held good in ordinary money or other dealings effected by that person, it is very strange that in a matter affecting a girl's personal honour and her future life is held good at the age of 14.

3. I don't know, if crimes of seduction or rape are frequent in Berar. The 1925 year amendment raising the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape or seduction.

4. The amendment of 1925 has to my knowledge made no difference in the old state of things. There is very little difference between 12 and 13. There is therefore no postponing the consummation of marriage or putting off marriage beyond 13. Whatever rise in the age of marriage of girls is found now, is not due to this amendment but to economical and other circumstances. In my view increase in the Age of Consent is the only step.

5. In Berar the usual age at which girls attain puberty is between 14 and 15. I don't find any marked difference in different castes and communities.

6. I have found in Berar that cohabitation is common before puberty soon after puberty and before a girl completes 13 years.

7. No. The above practice is not at all due to religious injunction.

8. Among Brahmins and higher classes and also among rich non-Brahmins *Garbhadan* ceremony is performed though not exactly the same among non-Brahmins. In many cases it is anterior to the consummation of marriage. The *Garbhadan* ceremony is generally performed after the attainment of puberty and in several cases within 16 days of it.

9. I don't consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. The girl's physical development is considered to be enough not less than 5 years after puberty.

10. At the age of 20, girl in India can be considered, to be competent to give an intelligent consent to cohabitation.

11. Yes; during my experience, I have come across several cases in which cohabitation before puberty or before physical development of a girl has resulted in injury to her health and that of her progeny. The girl becomes weak and she is liable to get disease.

12. Yes. Early consummation and early maternity are responsible for high maternal and infantile mortality, and also for several other diseases affecting the intellectual or physical progress of the people.

13. Yes, there has been further development of public opinion in Berar and it is not confined to certain classes only.

14. No.

15. I don't know anything about this.

16. I think yes, because there is more marked development in girls of 14 years and above.

17—18. I cannot answer this question.

19. Advance in public opinion is the only safeguard. I can suggest.

20. I think legislation fixing the age of marriage is likely to be more effective from the general opinion amongst intelligent and advanced women, I gather that the age of marriage is in consonance with public opinion in Berar.

21. As far as my experience goes progress and social reform by means of education is not enough. The aid of penal law is required.

**Written Statement, dated the 28th August 1928, of Mr. M. A. AMRAOTKAR, Additional District and Sessions Judge, Akola.**

1. The dissatisfaction referred to in the query exists among a considerable body of people. It is two-fold. Public opinion demands that the age of consent should be above 14 outside marital state and above 13 within the marital state.

2. (1—2) The main reasons for raising the Age of Consent as it is, are that the girls require protection before their understanding is developed, and their own physical condition, on which depends the well-being of the progeny requires that evil-minded persons who want to seduce them before they attain mature age the age when understanding is sufficiently developed should not go unpunished. I am therefore in favour of making an advance on the present law.

3. Within my experience as an Additional Sessions Judge since June 1926 a few cases of rape and seduction of girls for immoral purposes have come under my notice in appeals. I don't think that the raising of age to 14 years has succeeded in preventing or reducing cases of rape outside marital state or the improper seduction of girls for immoral purposes. In my opinion the only way to make the law effective is to raise the Age of Consent.

4. No cases to which the query relates have come under my notice. Public opinion has made strides in the matter of the marriageable age of



girls. With the education of girls, and with the tendency of the educated and college going youth not to marry before finishing the education, the marriageable age of girls to 13 and 14 years is now common among communities from which the college going boys are generally drawn. Stimulating of public opinion in the matter would be one of the most potent ways of putting a stop to the evil referred to in this query. The raising of the Age of Consent within the marital state would be another way in furtherance of the same object. As regards the question of putting off the marriage beyond 13 I think there would be still considerable body of public opinion which would be opposed to this measure as fixing the age of marriage by legislation is likely to rouse opposition of a violent type; as amongst uneducated classes and amongst agricultural, and other classes residing in villages such marriages are still in vogue. Amongst the orthodox sections of the Hindu community such a proposal is likely to raise a storm of agitation as they still believe that marriage within a particular age of girls is obligatory on them according to Shastric injunctions and custom. The practice in vogue also would make the proposal unacceptable. I don't think, therefore, advisable to put off marriages beyond 13 by legislation. The matter would be safely left to public opinion which should be stimulated in the matter. The raising of age to 14 years within the marital state, and stimulating public opinion appear to be the only ways to protect married girls against cohabitation with husbands within the prescribed age-limit.

5. First part. 13 to 15 years. Second part. I am unable to answer.

6. (1) It is not common before puberty.

(2) It is common soon after puberty.

(3) The instances are rare.

No case of the kind has come up before me.

7. I attribute the practice of consummation of marriage at puberty less to religious injunction and more to custom which obtains amongst the several classes of the community. The second part of the query therefore needs no answer.

8. The Garbhadan ceremony is usually performed in my part of the country. It generally coincides with the consummation of marriage. It also follows the consummation of marriage in some instances. It is rarely anterior to the consummation. It is generally performed after the attainment of puberty soon after it.

9. I don't consider the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I think that such consummation at the age of completion of 16 years by the girl would not occasion any injury to her own health and to that of her progeny.

10. The girl would be competent to give an intelligent consent at the age of 16 years.

11. I have not come across any such cases.

12. Yes. Early consummation and early maternity are responsible to some extent for vitally affecting the intellectual and physical progress of the people.

13. My experience does not enable me to answer this query.

14. I am unable to answer this query.

15. Such difficulties are experienced sometimes. A compulsory and authentic public registration of births and reporting of birth by the parents or guardian under penalty of law, and due checking of such entries would minimise the difficulties.

16. The difficulty or margin of error would be considerably reduced if the Age of Consent is fixed at 16 years outside marital state.

17. Yes. I think that the punishment provided for offences outside marital state and within it by the law at present is sufficient.

18. No.

19. The best safeguard would be stimulating public opinion.

20. Yes. Fixing a higher Age of Consent would be in consonance with public opinion in my part of the country.

21. The strengthening of the penal law as well progress of social reform by means of education are needed to secure the object in view.

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**Written Statement, dated the 14th August 1928, of Mr. R. N. BANERJEE, I.C.S., Deputy Commissioner, Akola.**

1. Very few people are aware of the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code; and there is no general dissatisfaction with the state of the law in this respect. The intelligent few holding advanced views on questions of social reform would like to still further raise the Age of Consent in the marital state because they expect that to reduce cohabitation with immature wives.

2. (1) The only consideration that would justify retaining the present law of the Age of Consent, is the necessity of not offending unthinking orthodox people.

(2) There is a good deal of actual cohabitation with immature wives and the Age of Consent should, therefore, be raised. I do not, however, think that the mere raising of the Age of Consent will result in any appreciable reduction of such cohabitation with immature wives; because very few Indian wives think of resorting to the law courts for preventing their husbands from such cohabitation.

3. Crimes of seduction are frequent in this part of the country but those of rape are rare. The amendment of 1925 has done little to check extra-marital rape or seduction. The classes of persons who commit these crimes have very little idea of the change in the law. I do not think crimes of rape or seduction can be appreciably checked by legislation. Social reform can, however, do some good. Rape will be reduced if a higher conception of womanhood is developed in Indian society and if there is a more free and chivalrous social intercourse between man and woman. Similarly, seduction will be reduced only by substituting a higher conception of the position of women and legalising divorce and increasing widow re-marriages.

4. The amendment of 1925 has not in any way been effective in protecting married girls against cohabitation with husbands. Very few Indian wives or their relations dream of taking legal action against their husbands for such illegal cohabitation.

(1) It has not postponed the consummation of marriage.

(2) It has no doubt focussed a certain amount of public attention on the necessity of preventing cohabitation with immature girls.

(3) The amendment has not been in any way instrumental in putting off marriage beyond 13 although economic causes and a certain amount of social enlightenment are now putting off marriage beyond 13 amongst educated people.

The only step which would effectively protect married girls from premature cohabitation is a compulsory minimum age, say 16, for the marriage of girls.

5. Girls in Berar attain puberty at the age of 13. This age does not differ in different castes or communities but differs to some extent with the differing economic circumstances of the family in which the girl is born. Girls getting plenty of nourishment attain puberty earlier.

6. (1) Cohabitation is not at all common here before puberty.

(2) Cohabitation with married girls is quite common immediately after puberty. (Mahomedan girls and girls of several high caste Hindus are sometimes married many years after puberty and cohabitation in their case is of course not common immediately after puberty.)

(3) Cohabitation before the girl completes 13 years is not common.

None of these cases come to court.

7. There is no consummation of marriage before puberty. It is common at puberty; but it cannot be attributed to any express religious injunction. It is of course due to very old custom, which has acquired almost a semi-religious authority.

8. Gaona is not performed in Berar.

Garbhadan ceremony is performed here. It coincides with consummation of marriage and is performed generally within 15 days of the girl's attaining puberty.

9. I do not consider that the attainment of puberty is sufficient indication of physical maturity to justify consummation of marriage. It is only two or three years after puberty that a girl's physical development may be considered to be enough to justify consummation without any evil effects. 15 or 16 would thus be a proper age for consummation according to the health and constitution of the girl.

10. Eighteen would be the minimum age. On account of the *purdah* system and the lack of education the average Indian girl does not really develop sufficient common-sense before she is 18.

11. I cannot give any specific facts or cases but certainly know of half a dozen cases within my experience in which cohabitation immediately after puberty has stunted the growth of the girl and resulted in weak and sickly progeny.

12. Early consummation and early maternity are only partly responsible for high maternal and infantile mortality. They are certainly responsible for the poor physique which our boys and girls have now. I also think they have led to the intellectual deterioration of the people.

13. There has been some development of public opinion in favour of an extension of the Age of Consent in extra-marital cases; but this is confined only to the thinking few who hold advanced views on social reform. I have been amazed at the paucity of even educated people in favour of raising the age in marital cases.

14. They generally do.

15. There have been difficulties in a few cases. The only evidence is the register of vital statistics and the medical opinion. The latter is not always conclusive and the former is not very often available. The registers of vital statistics should be carefully preserved in Government Record Rooms.

16. Yes. I believe it is easier to decide if a girl is 15 or 16 than to decide if she is 13.

17. Some leniency will of course be always shown in actually meting out punishment in marital offences but I would not make any distinction between the two.

18. As already suggested, the law so far as it affects marital offences practically remains a dead letter, but I think trials of marital offences should be *in camera*. I would make no distinction between extra-marital offences and any other serious offence.

19. I cannot suggest any.

20. Penal legislation fixing a higher Age of Consent for marital cases will be as ineffective as it has hitherto been. Legislation fixing a minimum age of marriage will be immediately effective and will lead to the physical, intellectual and moral improvement of the people in less than a generation. This is the supreme remedy.

Neither would be in consonance with public opinion which is blindly orthodox and which unreasonably dreads that want of marriage or consummation immediately after puberty would lead to immorality.

21. I would prefer to rely on the strengthening of the penal law to prevent the evils of premature cohabitation; and so all those who have bestowed serious thought on this matter. If we rely on the progress of social reform and propaganda, we may have to wait till the Greek calends.

**Written Statement, dated the 14th August 1928, of Mr. R. N. MUNDLE, Yeotmal.**

1. There is dissatisfaction, among the higher and educated classes, with the state of the law as to the Age of Consent as contained in Sections 375 and 376.

2. An advance on the present law is thought very desirable because there is an advance in opinion and feeling in the minds of the intelligent people; and because the spread of education and general knowledge among the people has gone a great way towards lessening their prejudices and religious bigotry, and to create in them some sort of consciousness of the evil effects of premature cohabitation. This change I know from my experience of the agitation and bitter opposition when the well-known Scoble bill was before the Imperial Council, and of only a little flutter made when in 1925 when the Age of Consent was raised to 14 years. Lastly, the physical welfare of boys and girls makes it necessary that premature cohabitation should be prevented by all rightful means.

3. No, the crimes of seduction and rape are not frequent in Berar. The cases were already not many. I think it rather too early to give an opinion on the effects of the amendment made in 1925. Raising the Age of Consent appears to me as one of the effective measures for preventing or reducing crimes under sections referred to in this question. The effect of law on this matter cannot safely be judged from only the numbers of crimes coming to court.

4. To my knowledge the amendment of 1925 has not led men to postpone the consummation of marriage, or to put off marriage beyond the age of 13. Public opinion has been stimulated in this direction recently; but it can hardly be said that it is due to the amendment of 1925, it appears to be due to the bills brought by Dr. Gour and by Mr. Sarda.

5. Girls in Berar attain puberty at the age of 13. There is no remarkable difference in this in different castes, communities or classes of societies. Weaker girls attain puberty at 13 while strong and healthy ones a year or two later.

6. In Berar cohabitation is common soon after puberty. These cases do not come to court, because of the particular ideas and feelings of our society about bringing these matters before court. In some cases puberty is hastened by administering country medicines. But this is very rare.

7. There is no religious injunction whatever to support the practice of the early consummation of marriage before puberty. Amongst the Brahmins and other higher classes, a religious injunction is generally observed and consummation of marriages takes place within 16 days of the attainment of puberty. This practice is followed by many rich non-Brahmins also. But this period is in many cases exceeded by these classes and men. There is apparently no penalty worth the name for breaking the injunction.

8. Yes. Garbhadan ceremony is almost invariably performed among those classes that I have mentioned above. It is performed anterior to the consummation of marriage. It is never performed before puberty.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. I think till the age of 20, and in the case of an exceptionally well-developed girl till 18, a girl's physical development is not enough to justify such consummation without injury to her health and that of her progeny.

10. At the age of 18. That age is considered enough for entering into any agreement, for managing an estate, or for undertaking any pecuniary liability. For giving an intelligent consent, therefore, to an act like cohabitation with a due realization of consequences often serious and of a life-long duration, the age of less than 18 should not be considered sufficient.

11. During my experience I have come across cases even among my acquaintances, in which cohabitation immediately after puberty but before

full physical development of a girl, has resulted not only in injury to her health, but in long illness, and some times in premature death. Age in these cases varied between 13 and 15. The injury was consumption or extreme debility.

12. Yes. I consider that early consummation and early maternity are responsible for high maternal and infantile mortality, though in this result a disregard of the principles of sanitation and hygiene contribute to a great extent.

13. Yes, there is further development in Berar. It is general among intelligent men and women of almost all classes.

14. No, not women.

15. Difficulties have been experienced. I think increase in Age of Consent to 18 will minimise these difficulties, as then physical development will be more marked.

16. No, I don't think the difficulty will be materially reduced by raising the age to only 14 years.

17. I would make a change in the 1st clause under column 2 of the Schedule II. The figure 12 should be changed into figure 16. Similar change be made in the 2nd clause also. Section 376A, should be expunged from the schedule. I would make no change in the amount of punishment already prescribed.

18. Offences within marital state should be triable by the Chief Presidency Magistrate or District Magistrate. The hearing of these cases should be in camera. I would recommend no change in the procedure regarding offences without marital state.

19. No.

20. Legislation fixing the minimum age of marriage is likely to be far more effective. But inspite of the very strong support from a large number of women's meetings in several parts of India, there will be a strong and even bitter opposition from the orthodox men; while people are accustomed to legislation on the Age of Consent. I think in my part of the country, fixing the Age of Consent will be more in consonance with public opinion.

21. I rely equally on the strengthening of the penal law and on the progress of social reform by means of education and social propaganda. This was my belief in 1891 and though there is a certain amount of advance in thought, opinion and sentiment in Indian society, I feel that it is not sufficient to change that belief. I may be permitted to add many of the public men in our country who are found to oppose any social legislation, do privately admit that to the workers of social reform, legislation in that direction will be very helpful.

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### Written Statement of Mr. N. S. PATIL, M.L.C., Pleader, Akola.

1. As a matter of fact owing to the general illiteracy, the people are indifferent as to the law on the subject. It is only the educated people who think that the provision of the law as to the Age of Consent is desirable. Opinion even among these educated people was divided at the time when the law made such provision for the first time. Many thought that the Government was unnecessarily interfering with the private life of the people whereas others thought that such interference by law was absolutely desirable for the prevention of physical deterioration of the country. Since that time, there has been much progress in the country and a great awakening even in the lower strata of all communities in the country. People who see with their own eyes the shortening of the age, physical decline of the existing generation, and the sure prospect of such continued deterioration in future, are naturally anxious to make an advance on the present law. Now that the people are accustomed to the old law, I do not think they will resent a small advance such as the proposed amending

law contemplates to make. The advance is not great and people have no reason to be dissatisfied with it.

2. In my opinion it is unnatural that the old law should be retained and no advance made. The advance is desirable for various reasons. It would serve an educative purpose. It would place before the mind of the people the necessity of bringing home to them the premature waste of human vitality that is at present taking place. Taking into consideration that the existing law could not bring the blessing of morality to the fullest extent, an advance on the present state and prevention of future decay are highly desirable.

3. So far as my knowledge and inquiries go, I do not think that cases of seduction or rape are very frequent in this part of the country. Very few cases of this kind are to be met with. I cannot state if the amendment of 1925 has made any difference. I cannot also suggest any measures to make the law effective.

4. The amendment of 1925 raising the Age of Consent to 13 years has not effected any change. It has not the effect of postponing the consummation of marriage. It has not stimulated public opinion nor has it been successful in putting off marriage beyond 13 years. Among educated classes or people however the marriageable age is above 13. It runs between 13 to 16 as a rule. Among the Mahomedans, the marriageable age is much higher than that of the lower classes of the Hindus, among whom the limit of that age is between 8 to 11. Kunbis, Malis and others marry their children very early. The Maratha community generally especially when they do not recognise *pat* marriage, marry their girls between 10 to 15 and sons between 18 to 20. Other communities or classes generally marry their children when they are in an infant stage. It is since the last 50 or 60 years that the same rule about the Age of Consent applied to every marriage. There is some evidence to show that the Mahomedan rule is responsible for the lowering of the marriageable age. This much is however certain that early marriage, wherever it exists, has shown no signs of change for the better even by the amendment of 1925. I think that the following measures may be effective in raising the Age of Consent and for the purpose of protecting married girls against cohabitation with husbands within the prescribed age-limit:—

(i) educative propaganda, (ii) diffusion of general education aiming at imparting moral and physical training; (iii) last but not least, a legislative enactment.

5. In this part of the country the girls attain puberty between the age of 14 and 15. In some cases, puberty is attained even before that age especially among families living in easy circumstances, but lacking in training to check sexual tendencies and having no knowledge how to protect children from vicious circles. This happens more or less in all communities or classes of the society.

6. In this part of the country, cohabitation before puberty is not common, but it is allowed soon after puberty, even when the girl is below 13 or the boy is below 15, but such cases come before Court very rarely.

7. Consummation before puberty is discountenanced by religion in the case of married persons. But in the case of unmarried persons, lust is not controlled by religion. Consummation at puberty or soon after puberty is sanctioned by religion, though not by religious injunction. Only it is due to general belief that at puberty consummation is recommended by religion. So far I have not been able to find any authority to support this belief. On the contrary Hindu Shastras do not speak favourably of a consummation before 16. Universal usage has it seems considerably controlled the Shastras in this respect, as would be seen from the following passage.

“There is no doubt that during the vedic period only mature girls were married. The due penalties attaching to not marrying a daughter before 10 or 12 were a later invention. But it appears that among the ancient Percians, the same rule prevailed for

in the Zenda Vesta we find the following. "For her third complaint mourns the God Ashi the Sublime; that is the worst deed which hostile men commit when they keep a maiden from marriage."

According to the Avesta, however, the fifteenth year was the normal time for the marriage of girls. (See the Civilization of the Eastern Iranians by William Geigar p. 60.) It appears therefore, that the beginning of the 16th year was the age at which the girls were married in ancient times. That is the rule of the Mahabharat and the Samvita two of the most ancient books of the Hindus and that probably was understood by the word "Nagnika" as mentioned in the Mahabharat.

Marriage after puberty was not disallowed.

By Shudhi is meant bath on the fourth day as is done in the case of a woman in menses. Marriage at an earlier age was enjoined only by commentators of a more recent date. Mann speaks of the 12th year as the proper age for marriage. So says Angiras. Marriage of youthful maidens only were allowed in ancient times and consummation was thought necessary, for, we find, texts of Likhiti, Brihaspati, and Harita showing that only on the expiration of the fourth night and on the performance of the *chaturthi hom*, the wife becomes one with the husband and takes his gotra. But in modern times consummation is not necessary to make the marriage tie binding.

8. Yes. Garbhadhan ceremony is usually performed in our part of the country and it coincides with the consummation of marriage. It is performed after the attainment of puberty or soon after it. It is only in exceptional cases that it is postponed.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I think that consummation should never take place before the completion of the 14th year, as I think that physical development does not take place before that age and consummation before it is in all probability injurious to the girl although in some cases it is not accompanied with any serious consequences. But in many cases injury is caused to the girl, especially when puberty takes an abnormal course owing to want of proper training in which case the girl suffers physically and consequently she is not capable of living a long life and producing healthy progeny.

10. Before 14 years a girl is not competent to give an intelligent consent to cohabitation even if she does not suffer from any bodily infirmity.

11. I have come across a few cases not in the course of my profession but out of Court, of girls going to ruin owing to cohabitation before puberty and also I am aware of cases in which cohabitation has taken place before puberty and yet it did incapacitate the girl from bearing progeny but all the issues of the girl died immediately after birth, though her issues in the later stage of life are still living and are healthy. I am also aware of a few cases in which cohabitation has taken place immediately after puberty but the progeny in such cases is generally weak and short-lived with very few exceptions. But in all the cases the cohabitation has not taken place before the completion of the 13th year. I have heard of some cases in which consummation had taken place even before the 12th year but I did not get an opportunity to watch over such cases with any degree of precision so as to be able to say whether the progeny was long-lived or short-lived.

12. Yes. I consider that early consummation and early maternity are responsible to a greater degree for high maternal and infantile mortality and they tend to bring down the vitality of a nation and injuriously affect the intellectual and physical progress of the people and if India were freed from the evils, if it is not at all possible to do so, she is sure to surpass many of the civilised countries on the face of the globe in intellectual progress because there still runs the blood of the ancient Aryans in the veins of her people because no other people is so richly blessed with an

heredity of the most ancient civilisation, which makes man a man in the true sense of the word.

13. As I have already observed, the general mass of the people are indifferent and unaffected by the law and the improvement sought to be achieved by the amendment of 1925. Illiteracy is still universal. Moral training is absent. There is some 'awakening among the educated people but the divisions and sub-divisions of the Indian people are and have been a source of serving as an impediment in the way of diffusion of marital virtues owing to the indifference and apathy which the heterogeneity of the people alone brings with it.

14. In my part of the country, women of the lower classes of people favour early consummation of marriage especially when the disparity between the ages of the husband and the wife invokes some anxiety on the part of women to bring about early consummation, when the husband is far advanced in age than the wife. In such cases very little regard is paid to the protection of the girl-wife.

15. Question No. 15 gives rise to a controversial question. The question of the detection of the crime or rather social wrong is a very delicate one. If the machinery for detecting this sort of crime were the same as is employed in the case of ordinary offences against person or property, it is likely that there would be abuse of power. It is likely to cause unnecessary annoyance and hardship to many respectable families and on this account the law should not attempt to show an anxiety to bring offenders of social type to book by taking recourse to measures more stringent than those that are available at present. The duty of complaining against any person who has committed the crime both marital and extra-marital should rest with the parent or guardians of the person wronged and the duty cast upon the parent should be of a moral nature instead of a legal one as is thrown upon persons in the case of ordinary offences of serious nature. In cases of rape, the person raped is the complainant in addition to the *parens patri*. In no case of marital offences shall a Magistrate take action on his own information or on a police report as a matter of fact. I am not aware if any difficulties are experienced in the detection of the crime; and I do not think that there is any need of suggesting any special measures in this respect, and I am not in a position to suggest any measures beyond those that are suggested above.

16. The purpose will be served by raising the Age of Consent to 14 years only.

17. I would separate marital offences from extra-marital ones and make them different offences. My classification would be as follows:—

- (a) Sexual intercourse by a man with his wife when she is not more than 12 and when he is not more than 16 should be punishable with corporal punishment or fine, even if it takes place with consent.
- (b) Sexual intercourse by man with his wife below 14, when he is below 18 should be punishable with fine only, even if it takes place with mutual consent.
- (c) Sexual intercourse by a man with a woman whom he knows not to be his wife, when she is below 14, should be punishable as for rape even if it takes place with consent.
- (d) Sexual intercourse by a man below 16 should be punishable as for rape even if it takes place with consent of the woman whom he knows to be not his wife.
- (e) Sexual intercourse by a man with a woman who is not his wife but if the woman is below 14 and consents, should be punished with a shorter term of imprisonment, say, two years and fine.
- (f) Sexual intercourse by a man not more than 18 years old with a woman who is not his wife should get a lighter punishment, say, two years, if the intercourse is with consent.



- (g) In all other cases of ordinary rape, the punishment should remain the same as at present.

In the case of juvenile offenders, S. 562 of the Criminal Procedure Code should be resorted to wherever it applies.

18. In the case of trials for offences within marital state, the trial should be held by a Court of Session, Chief Presidency Magistrate or District Magistrate in all cases. But the trial for offences of sexual intercourse by a man with his wife above 12 and below 14 may be held by a Magistrate of the first class specially empowered in that behalf if the punishment be reduced as stated against question.

17. Transportation for life or imprisonment for ten years would have the effect of dissolving the marriage or will subject the wife to an unnecessary hardship and would reduce her to a state of helplessness. In the case of extra-marital state I would propose no change in procedure.

19. I do not think that it is necessary to provide for any additional safeguards other than those provided by the Indian Penal Code. The ordinary law of punishing the harbouring of offenders and abetment can be sufficient safeguards to prevent collusion and to protect offenders. The present law of procedure is a sufficient guide and Indian Penal Code provides for remedies for improper prosecution or

20. I personally think that both remedies should be used either concurrently or separately. I can't state what would be the public opinion on the questions. But so far as my inquiries go, increase in the marriageable age is more advisable than increase in the Age of Consent. By putting a stop to early marriages, the desired results are sure to be achieved and that form of reform is of a more civilised type than the penal legislation fixing a higher Age of Consent. In both cases public opinion would resent both the reforms but in due course of time an educative propaganda on the lines suggested above, would enable the people to adjust themselves readily to the measures. I can't state which of the two alternatives would be in consonance with public opinion in our part of the country.

21. I would rely more on the progress of education and social propaganda as means to secure the object in view. But at the same time penal law should also be strengthened. However, precaution should be taken to defer the application of the law with the proposed advance to such a time as would enable the public to realise the benefits of the object and to be convinced that they are not taken by surprise.

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**Written Statement of ANANDIBAI KODOLKAR, M.B., B.S., Lady  
Assistant Surgeon, Chanda.**

1. Yes, there is dissatisfaction.
2. Physical and moral benefit may be achieved by making an advance on the present law, in marital as well as extra-marital life of women.
5. Girls attain puberty about the age of 12 or 13. It varies a little with the circumstances and different communities.
6. Cohabitation is common soon after puberty; these cases generally do not come to court.
7. There is no special religious injunction for early consummation of marriage and hardly any punishment for late marriage.
8. Garbhadan ceremony is performed after marriage and first menstruation.
9. Attainment of puberty is not a sufficient indication of physical maturity, for the safety of her health and that of her progeny a girl should be unmarried at least till the age of sixteen.
10. May be about 16.

11. Child bearing just after puberty as at fourteen injures (tears) the private parts in some cases; mothers about the age of 14 are not able to look after their infants, feel worried over little things, their nervous system is damaged in many cases, and infants are neglected.

12. Early consummation of marriage is partly responsible for the high maternal and infantile mortality and also sound mind in a sound body goes with it too.

14. Majority of mothers feel these days that girls should be married later than 14.

15. There is difficulty but to fix age between thirteen and fourteen exactly.

16. If the Age of Consent is raised above fourteen the difficulty is reduced.

17. Marital offences may be *nil* when marriage age raised to about 16.

20. To secure the object in view I prefer to rely on the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 5th January 1929, of Vaidya Panchanan  
L. B. PHANSIKAR of Nagpur.**

1. There is no dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376, I. P. C., in this part of the country. The masses are blissfully ignorant of the very existence of the Age of Consent Act, which is practically a dead letter. Whatever dissatisfaction is sometimes heard of is only confined to the so-called social reformers of an ultra-radical type who, in pursuing their fads and hobbies, are inventing and exaggerating all sorts of imaginary grievances. And their present agitation to make the law more stiff and drastic has created a stir and consternation among the masses.

2. I am opposed, on principle, to any legislation on special or religious matters, particularly in respect of marriage and marital relations. Marriage is the most sacred institution recognized by law and religion of the Hindus and it is the bed-rock on which their whole social structure is firmly based. It is not only a mechanical process, as in the West, and it is a great blunder to apply western concepts of right and wrong to and tamper with it, in order to bring it in consonance with the standard of westerners. The present law being practically a dead letter, I would not urge its repeal, but any advance on the same I would vehemently oppose. People have strong apprehension that this is a preliminary step to the introduction of divorce among the Hindus. Although Hindus have lost almost every thing in the way of material possessions, they have jealously and zealously preserved the sanctity of their married life and purity of their women folk, even at the cost of their lives. And the legislature in attempting to rob them even of this sacred heritage would be incurring great risks. The impending legislation might placate a handful of fire-eating social revolutionaries. But at the same time it would wound the feelings and susceptibilities of millions of orthodox people and be responsible for the disruption and disintegration of the Hindu society.

One cannot rise above the influence of the atmosphere one lives in, and so completely surrounded as we are by all sorts of western influences, matters are already automatically drifting towards the goal aimed at by the so-called reformers. Owing to economic and other causes and advance in the standard of education of boys and girls, the marriageable age of boys and girls has already gone up considerably high in the cities and among higher classes and educated people all round.

Girls now-a-days are very rarely married before they are 16 and a large number of cases are seen where the girls are even 18 or 20 at the time of their marriage. This being the case, I see absolutely no justification for any advance on the present law. Let the reformers hasten slowly.

4. The concluding portion of my answer to Question No. 2 answers this Question (No. 4).

5. In my part of the country girls in higher classes usually attain puberty between 13 and 14. Since diet and mode of living play an important part in the attainment of puberty, girls in well-to-do and middle class families accustomed to rich food, stimulating drinks, sedentary habits and frequent visits to Theatres and Cinemas, attain puberty at an earlier age than girls belonging to labouring classes who attain puberty generally about 14 and 15.

6. In my part of the country cohabitation is not common among any class or classes of people, either before puberty or before the girl completes 13 years. It is generally resorted to as soon after puberty as circumstances permit where the girl is married. But now-a-days girls are generally not married before 15 or 16, at any rate among the educated classes.

7. The practice of consummation of marriage before puberty is not sanctioned by any religious injunction. But consummation at puberty is enjoined by the Smritis.

8. Garbhadhan ceremony is usually performed in my part of the country. It coincides with consummation. Rather "Garbhadhan" literally means consummation. It is performed after attainment of puberty within the first 16 days or failing this for some unavoidable reason, it is postponed to a later date when time and other circumstances may be auspicious. Among orthodox people, elderly persons particularly ladies, do not partake of food cooked by girls who have a recourse to consummation without Garbhadhan ceremony. Among the so-called reformers this rule of Garbhadhan ceremony is generally honoured more in the breach than in the observance.

9. Ordinarily, I consider attainment of puberty, as a *prima facie* indication of a girl's physical maturity to justify consummation of marriage. In special cases special considerations will have to be made. For such cases, no hard and fast rule as to age can be prescribed. It will depend upon the health and physical development of individual girls.

10. If intelligent consent means consent given with a due realization of consequences of all kinds, my answer is that it depends more or less on the intelligence and education of a girl. An unintelligent or uneducated girl living among backward people may possibly never be able to give such intelligent consent as appears to be contemplated by this question. But girls living in cities in the midst of sex-stimulating influences and romantic surroundings develop sex-consciousness at an early age and generally at puberty they are well able to give an intelligent consent.

11. During my professional experience of 28 years, I have not come across any such case as is described in this question.

12. I do not consider early consummation or early maternity responsible for high maternal and infantile mortality or for any other results vitally affecting the intellectual or physical progress of the people. It has become a fashion with the social reformers to attribute all the present day evils and degeneration in the society to these two causes. But from my long professional experience I can confidently say that the real causes of high maternal and infantile mortality are quite different. They are connected with economic conditions and moral delinquencies of the people. Early consummation and early maternity may be responsible for the said results. But the extent of that responsibility is negligible compared with other more patent causes which are well-nigh ignored. The disease being wrongly diagnosed, inept and in efficacious remedies are suggested, which are worse than the disease itself. From my long experience, professional as also otherwise, coupled with a critical study of midwifery records of maternity homes, I make bold to say that the alleged early consummation and early maternity have very little to do, if at all, with high maternal and infantile mortality.

13. There has been no further development of public opinion in my part of the country in favour of an extension of the Age of Consent since the amendment of the law in 1925, except among a limited circle of social reformers.

14. Women in my part of the country generally favour consummation of marriage not long after puberty in the interest of purity and safety of the girls, subject of course to exceptions.

17 and 18. I am strongly opposed to the creation of any offences connected with marital relations and still further opposed to any severe punishment such as has been advocated by some over-enthusiastic reformers.

As for extra-marital offences I am for marking the punishment as deterrent as practicable.

20 and 21. Public opinion in my part of the country is not favourable either to penal legislation fixing a higher Age of Consent for marital cases or to legislation fixing the minimum age of marriage. I am strongly opposed to both the proposals. Whatever progress of social reform may be desirable, it must be secured by means of education and social propaganda. Both these proposals are based on the ideals of materialistic west and seek to destroy the entire fabric of Hindu society. An attempt to interfere with the institution of marriage of the Hindus by legislation is a direct raid on their religion and the indignation and resentment that would be caused thereby cannot be realized or appreciated by the social revolutionaries who have set afoot this agitation as they are apparently men devoid of all respect for Hindu culture and sentiment. Hindu Shastras enjoin that the marriage of a girl must be solemnized before she attains puberty. And this pre-puberty system of marriage has helped to maintain the purity of the Hindu race at a high level and every member of the community is able to claim an unbroken and unblemished record of ancestry for generations. Modern civilization has made marriage system a mere mechanical process where animal passion is enthroned. Adultery, abortions, infanticides, suicides, murders, abductions, desertions, divorce courts, juvenile courts, leagues for unmarried mothers, orphanages, fondling homes and such other horrors are but the heritage of modern western civilized society. The proposed legislation is trying to introduce all these horrors into the Hindu society with a vengeance and cause its disruption and disintegration as speedily as possible. The religious and spiritualistic Hindus dread to think of them. The bill which has been on the legislative anvil of the Assembly, though ostensibly meant to restrain the child marriage in India, is in reality, a piece of legislation advocating post-puberty marriage for the whole of India and for all classes and communities which have not already adopted this system of marriage. Orthodox Hindu community generally follows this pre-puberty system and is strenuously opposed to this legislation, as it forces them, for a transgression of the law, to choose between jail and their religious convictions.

On principle social reform must be peaceful evolved from within, especially in a religious country like India and not forced from without.

This penal law would multiply difficulties of parents in getting their daughters suitably married. It would be a fruitful source of harassment, vexatious prosecutions and blackmailing of poor innocent people at the hands of mischievous persons and would blight the married life and domestic happiness of the people. Prosecutions and punishments of husbands under the Age of Consent Act are sure to create estrangement between husband and wife and re-approachment between them being impossible would leave the wife, from a Hindu point of view, in an anomalous and unenviable position. Similarly sad would be the plight of a newly married girl if her marriage is declared null and void and her father or husband is punished under the impending marriage legislation.

In view of all these considerations, I would vehemently oppose both the aforesaid proposals.

**Written Statement, dated the 9th August 1928, of Mr. ISHTIAK ALI,  
Extra Assistant Commissioner, Seoni.**

1. Yes. Present Age of Consent is below the desired limit, hence some dissatisfaction.

2. Making an advance on 'the present law is essential because if the Age of Consent is raised to 16 years then the girl will be in a convenient position to give consent to cohabitation.

3. (a) Personally I consider that true cases of seduction or of rape are those where girls of the age of 12 years or under, are victims and such cases are only few in this district.

(b) I do not think that Public is at all cognizant of the amendment of the law as enacted in 1925, raising the Age of Consent to 14 years and thus it cannot conveniently be said as to whether the amendment in question has succeeded or not, in preventing or reducing the number of cases of rape outside the marital state or the improper seduction of girls for immoral purposes.

(c) Law as it presently stands will take its own time to make itself effective.

4. No appreciable improvement is noticed but there is no doubt that amendment of 1925 raising the Age of Consent within the marital state to 13 years ought to be effective in protecting married girls against cohabitation with husbands within the prescribed age-limit.

(1) By postponing the consummation of marriage. .

(2) By stimulating public opinion in that direction or (3) by putting off marriage beyond 3; and no other step are suggested to make it effective.

5. (a) Usually girls attain puberty in this part of the country at the age of 14 years.

(b) Yes, it does differ in different castes, communities or classes of society and the reason being the tendency of physical development amongst girls to grow into womanhood and that sort of development much depends on the means of the parents and guardians of girls in bringing them up.

6 (a) Cohabitation seems common in this part of the country amongst all classes of people soon after puberty.

(b) No cases of this class as enumerated in 3 sub-clauses under clause 6, come to court.

7. (a) Yes, I do attribute the practice of early consummation of marriage at puberty wherever it exists to religious injunctions amongst Hindu community alone.

(b) The authority I am told prescribes no penalty for the breach of the consummation of marriage except that the breach is considered to be a sin.

8. (a) Yes. *Gaona* ceremony is usually performed in this part of the country amongst Hindus alone.

(b) It does generally coincide with the consummation of marriage.

(c) Yes, it is performed generally after the attainment of puberty and say within a year or 6 months time, as means amongst poorer classes specially would permit it.

9. Attainment of puberty is not necessarily a sufficient indication of physical maturity to justify consummation of marriage. In my opinion at the age of 16 years at least a girl's physical development ought to be considered to be enough to justify such consummation of marriage with no chance of injury to her own health and that of her progeny.

10. I think that at the age of 16 at least a girl in India becomes competent to give an intelligent consent to cohabitation, with a due realization of consequences.

11. In my experience as Magistrate I came across 2 or 3 cases in which it was found that cohabitation before puberty or after puberty but before full physical development of the girls had resulted in injury to their health and body and consequently it must have prejudicially affected their progeny. So far as I remember one girl was aged about 7 years another about 8 or 9 years and the 3rd girl was about 13 years of age.

12. The reply is in the affirmative.

13. Development of public opinion is confined only to educated classes.

14. Reply is in the affirmative.

15. (a) Reply is in the affirmative.

(b) Proper maintenance of Birth Registers, and Vaccination Registers will not wholly remove but would minimise the difficulties to a substantial extent.

16. The difficulty or margin of error in determining the age may materially be *minimised* only if the Age of Consent is raised at least to 16 years. I do not favour 14 years at all.

17. (a) No useful purpose will be served by separating extra-marital and marital offences into different offences.

(b) Nature and amount of maximum punishment as these presently stand need no alterations.

18. Reply is in the negative.

19. Reply is in the negative because safeguards existing at present against collusion to protect the offender or against improper prosecution or extortion are sufficient.

20. I consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage and that will be in consonance with public opinion in this part of the country.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda to secure the object in view.

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### Written Statement of N. B. KHALATKAR, Pleader, Katol.

1. There is some dissatisfaction, I say some because such cases do not come to light.

2. To remove this dissatisfaction, it is necessary to raise the Age of Consent, because I think the present age is incapable of an intelligent consent. Because puberty does not mean full intellectual development.

3. (1) Such crimes are very rare. Even if there are any, they come to light.

(2) No.

(3) Cannot say.

(4) The age-limit should be raised.

4. The desired effect has not come about. Female education must be made universal and then people will realise the evils. All this means social propaganda and the increase in the marriage age.

5. Girls attain puberty between 13 and 16. This differs in different grades of society and different castes, according to their habits and standard of living.

6. Consummation very soon after puberty is the rule in our parts. Almost never before puberty. The age of the girl therefore does not enter into consideration.

7. Consummation soon after puberty is according to Shastric injunction.

8. Gaona or Garbhadhan is very common and is generally performed within 16 days after puberty.

9. Puberty does not necessarily mean fitness for cohabitation. It often comes without the requisite bodily development. In order to protect the health of the girl and her future progeny, it can not be definitely stated how many years should elapse after puberty before consummation. But I think these objects would be secured if 16 is the age-limit fixed for this purpose.

10. I think 16 is the proper limit for Age of Consent. But in extra-marital cases it should be 18, the present age of 13 for intra-marital relations should be kept on.

11. I hear sometimes of these instances but I cannot give exact details. But I have no doubt in my mind about the evil effects.

12. I honestly believe that maternal and infantile mortality is the result of intercourse referred to in Question No. 11.

13. There is a general agreement on the question of the increase in the consent age. But it is mostly confined to the educated classes.

14. Yes.

15. I cannot reply to this question. I have no experience of such cases and so am unable to suggest any remedy.

16. If the Age of Consent is taken to 14 or above, the difficulties referred to in Question No. 15 will be largely removed.

17. Intra-marital and extra-marital relations must be considered from different points of view. Punishment for both kinds of offences should continue as at present.

18. The procedure of inquiry trial for both the offences should be the same as heretofore.

19. I cannot suggest any remedies.

20. The general opinion is that the minimum age of marriage should be raised.

21. I have no doubt that both legal help and educative propaganda are necessary to attain the desired object.

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### Written Statement of Mrs. ANANDIBAI DAMLE of Yeotmal.

Your questionnaire is a long one but I do not think it is necessary to reply to all the questions. I am going to touch on only one or two of them.

In the case of a husband, the present Age of Consent is 13 years. Should it be 14 is a question. In this matter, I think that it is not necessary to raise this limit by law. Only two years ago this was raised from 12 to 13. We have not yet got sufficient experience of its working and so it is not desirable to raise this limit just yet.

Besides in the case of husbands, such cases very rarely come to court. Those that do come are generally the result of malice. Besides, taking into consideration the climate of India, one might say that 13 is a sufficiently high limit in the case of a husband.

Even though there are pre-puberty marriages among the Hindus generally there is no cohabitation before the Garbhadan ceremony. And in these rare cases when it does so take place, it cannot be prevented by law. Religious customs enjoin a sacrificial ceremony in such cases. Among the illiterate classes, the girl is not sent to the husband's house before she attains puberty. And in cases where such a lapse occurs there is a custom among them to pay some fine to the caste Panchayat. In short by religion and social usage, this undesirable thing has been put a stop to; and so no law is required. Law will only mean an instrument of vengeance in the hands of rascals. Besides people's religious scruples will be needlessly injured. Therefore I am of opinion that the Age of Consent should not be

raised from 13 to 14. There is no objection to raise the age-limit against a stranger. Our religion regards the marriage tie as something sacred and it is not desirable to make so light of it.

On the other hand, if experts definitely declare that early consummation alone is responsible for deterioration of the race, the best remedy is raising the age of marriage. To marry early and then to go after such Bills is no remedy in my opinion. The best remedy would be to see that every village has a school for girls teaching up to the 4th (English) standard. That education must be within the reach of every father, rich or poor and it must be such as would be useful to the girl in her future life. That women should receive education is a fact accepted now not only by the middle class but even by the lower classes. The increasing number of girls going to school amply prove it. So if leaders are serious about bringing about reform in this matter, they should think of this and open girl schools in every village. That will lead to the improvement of these marital evils.